

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285  
et al. :  
Plaintiffs :  
 : Washington, D.C.  
V. : Tuesday, June 10, 2008  
 :  
DIRK KEMPTHORNE, Secretary :  
of the Interior, et al. :  
 :  
Defendants : MORNING SESSION

*TRANSCRIPT OF EVIDENTIARY HEARING  
DAY 2  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE*

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## C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DR. JAMES MILLER				
By Mr. Levitas		--	247	--
			255	--
By Mr. Stemplewicz	--	212	--	254
DR. BRADFORD CORNELL				
By Mr. Gingold	261	--	--	--

## E X H I B I T S

NUMBERADMITTED

## DEFENDANT:

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**P R O C E E D I N G S**

THE COURT: Be seated everybody, but counsel, I would like to see all counsel in chambers, all of you. Eric will show you out through the back door, just for a few minutes.

COURTROOM DEPUTY: Civil Action 96-1285.

THE COURT: All right. Is Mr. Miller here, Dr. Miller? Good morning, sir. You're still under oath.

THE WITNESS: Yes, sir.

**(DR. JAMES MILLER, PLAINTIFF witness, having been previously  
duly sworn, testified as follows:)**

**CROSS-EXAMINATION**

BY MR. STEMPLEWICZ:

Q. Good morning.

A. Good morning.

Q. Yesterday you testified about the TGA, the Treasury's General Account, and I believe you likened that to the government's bank account. Is that right?

A. Yes.

Q. What exactly did you mean by that?

A. Well, when monies come in to various agencies, as well as directly to Treasury, they end up in the TGA.

Q. And when you say monies, you're referring to cash. Correct?

A. Well, cash or checks or -- yeah.

Q. So how does money get out of the TGA? How does that cash get out of the TGA?

1 A. Well, Treasury can write checks, other agencies can write  
2 checks on the monies in the TGA.

3 Q. But what is required before a check can be written? There  
4 has to be some authority to write that check. In very general  
5 terms here, we're not getting down into real details, but in  
6 most general terms, how do you explain how a government  
7 expenditure is authorized?

8 A. Well, it's a matter of law.

9 Q. So there would have to be an appropriation of some kind.  
10 Correct?

11 A. Well, not really. I mean, a lot of monies that go in the  
12 TGA and out of the TGA are pursuant to what are called  
13 entitlement spending, where the amounts of money are not  
14 appropriated each year, it's a matter of permanent authority.

15 Q. What about in the case of Individual Indian Monies? What  
16 would authorize a check to be cut out of that fund?

17 A. I have read some of the materials, a lot of the legal  
18 language. My understanding is that Interior has authority to  
19 cut their own checks drawing --

20 Q. But wouldn't there have to be -- I'm sorry to interrupt, but  
21 wouldn't there have to be an authority, or at least a balance in  
22 the fund account? In other words, the IIM that is administered  
23 by Interior is represented by a fund account; I think you talked  
24 about Mr. Gregg's testimony yesterday and he talks about  
25 14X-6039, that being the account that's used to keep track of

1 IIM. So wouldn't there have to be some balance in that fund  
2 to --

3 A. Well, my understanding is it's an aggregate account. There  
4 are not accounts for each individual Indian in the Treasury  
5 General Account, there is in the Treasury General Account monies  
6 from IIM monies in the aggregate.

7 And again, we need to distinguish between the money and  
8 the claim on the money. Just like when a person has a  
9 checkbook, they have a claim on money that's in the bank, though  
10 the money in the bank is fungible and mixed with everybody  
11 else's money.

12 Q. It's essentially the difference between cash and funds, in a  
13 sense. The funds account is what's used to keep track of where  
14 the cash is authorized to go?

15 A. I don't want to comment on the nomenclature. I think I  
16 explained what I understand about the difference. There is a  
17 claim, an account, a claim, and that's different from the cash  
18 in the account.

19 Q. When the Army pays for a tank, for example, it purchases  
20 from a manufacturer, it writes a check to pay for the tank.  
21 Doesn't that money come out of the TGA?

22 A. My understanding is that the Department of Defense is  
23 different in that regard. They're different in a lot of regards  
24 with respect to budgeting. But my understand is it doesn't come  
25 out of the TGA.

1 Q. Okay. Any idea where it would come out of?

2 A. They have their own accounts, their own deposits. That's my  
3 understanding, subject to check.

4 Q. Let's go over again your understanding of the benefit to the  
5 government from having this Individual Indian Money. I believe  
6 you testified that having that cash eliminates the need to  
7 borrow. Is that correct?

8 A. Well, having the cash -- and let's define the cash. The  
9 cash is whatever receipt -- the degree to which receipts exceed  
10 outlays to individual Indians.

11 Q. It's basically net cash?

12 A. Net cash.

13 Q. Okay.

14 A. When you have that net cash, you don't have to borrow that  
15 amount and you don't have to pay interest on what you borrowed.

16 Q. And you would borrow that amount to make expenditures of the  
17 government. Correct?

18 A. If you didn't have the cash, you would have to borrow the  
19 money to make expenditures to the government -- for the  
20 government.

21 Q. And if you had surplus cash, your receipts exceeded outlays,  
22 and so at the end of a given year the government takes a look at  
23 where things stand and says, a-ha, we have a surplus this year,  
24 what are we going to do with that, normally what does the  
25 government do with that?

1 A. Well, at every day, every hour, practically, through the  
2 year, the government is turning over dead instruments; dead  
3 instruments are becoming due, are maturing, and they have to  
4 refund the cash, give the cash back. And so this maturing debt  
5 has to be refinanced, has to be reissued. You have to do new  
6 borrowing throughout the year.

7 So even if you have a surplus during the year for the  
8 end of the year -- of course, as we know, there are injections  
9 of cash and there are drawdowns of cash, and debt management has  
10 a lot to do with smoothing out those variations. But even if  
11 you have a surplus, you're continually churning that debt and  
12 issuing new borrowing. Or doing new borrowing. Excuse me.

13 Q. So I just want to make one thing clear, that when the  
14 government benefits from Individual Indian Monies, first of all  
15 we're talking about net, net of disbursements out of --

16 A. Yes, sir.

17 Q. -- individual monies?

18 We're also talking about net of investments that  
19 Interior or Treasury purchases with that cash to put in an  
20 investment for the individual Indian. That wouldn't be free  
21 roaming cash that the government could then use for  
22 expenditures. Correct?

23 A. That's correct. I'm not commenting on whether they are  
24 investing it at the right interest rate or anything like that.

25 Q. Right. So the government gets this benefit from the cash

1 that the plaintiffs are claiming, if it spends the money. Is  
2 that correct? Or I guess one other possibility --

3 A. It doesn't borrow to maintain this minimal cash reserve to  
4 avoid the risk of overdraft.

5 Q. Right. It doesn't borrow for the sake of being able to walk  
6 around saying, I have five billion in my checking account. It's  
7 going to spend that money?

8 A. No. Let's -- I don't agree with that. My point is that if  
9 you have an extra \$100 million, that's \$100 million that you  
10 don't have to borrow to maintain that \$5 billion. Today it's  
11 \$5 billion, tomorrow it might be five and a half, I don't know,  
12 but to maintain whatever Treasury views as its appropriate  
13 minimum balance to avoid a risk of overdraft.

14 Q. Now, it's also possible, is it not, that the government  
15 could benefit from this sort of free-roaming cash by putting it  
16 in the bank itself and drawing interest, putting it, say, in a  
17 Federal Reserve account or in one of the banks it has a contract  
18 with? And that interest that it draws on those accounts would  
19 be a benefit as well. Correct?

20 A. Well, I think one of the reports that Mr. Levitas cited  
21 yesterday is one in which there's great discussion about what  
22 the federal government does in those times, even in a year in  
23 which there are substantial deficits, those times when you have  
24 revenues coming in that exceed outlays. And at those times the  
25 government uses basically three instruments for parking money

1 overnight and earning interest on those balances overnight.

2 MR. STEMPLEWICZ: Could we have Attachment A, please?

3 BY MR. STEMPLEWICZ:

4 Q. Could you please take a look at this screen, Mr. Miller, and  
5 tell me if you recognize this. I'll represent to you that this  
6 was the Attachment A to the memorandum that the plaintiffs filed  
7 in support of their claim for restitution and disgorgement. Do  
8 you recall looking at that?

9 A. I've seen something that looks very similar, yes.

10 Q. If we could go to the very end of that, the last page, you  
11 see there on column G, the nominal benefit conferred, and the  
12 total is about \$4.5 billion? Do you see that?

13 A. I see that.

14 Q. What do you understand that to be?

15 A. I have not -- I was not retained to analyze this data.

16 Q. Okay. So as far as you're aware, there's no claim that  
17 there's 4.5 billion sitting in the Treasury somewhere, you know,  
18 sort of between the cushions that's available to be paid to the  
19 plaintiffs?

20 A. I'm not testifying to any particular amount.

21 Q. And likewise, all the way over on the right, the \$58 billion  
22 figure, that would be the same. Correct?

23 A. This table was prepared under certain assumptions on which I  
24 can not verify. I do not have requisite information to verify  
25 the numbers. I know generally what they have done here, and I

1 agree generally with the methodology that comes up with that  
2 accumulated benefit conferred column, but I can't comment on the  
3 actual data, the actual amounts, the net amounts that were  
4 retained by the government. I do not have that knowledge.

5 Q. You indicated certain assumptions are behind this table. Do  
6 you vouch for any of those assumptions?

7 A. I vouch for the methodology, and that is whatever the delta  
8 was, whatever the net receipts were - that is, the receipts  
9 minus the outlays - that when you take that figure, which  
10 represents a figure that the federal government does not have to  
11 borrow, and add to that the interest, and then in the subsequent  
12 year you have the same figure, the principal plus the interest  
13 that you don't have to borrow, and so you're saving that plus  
14 the interest on that, and you continue that cycle through all  
15 the years, that adds up to whatever the avoided interest -- the  
16 avoided borrowing costs would be for that year. And then you  
17 add them over all the years, and that's what I understand that  
18 column in the right to be.

19 MR. STEMPLEWICZ: Can we go all the way back to the  
20 1887 figure, the first page?

21 BY MR. STEMPLEWICZ:

22 Q. Again, we have this column G, the nominal benefit, appears  
23 to be the difference between the total revenues in E and the  
24 total disbursements in column F. Correct?

25 A. I have not -- again, I was not asked to analyze these

1 tables, to affirm the computations contained in these tables, to  
2 confirm the assumptions made that underlie these tables,  
3 underlie these numbers. I can tell you that the methodology, as  
4 I have been told and represented to me, I believe is correct,  
5 and that was just what I described, sir.

6 Q. We talked about benefit conferred under this methodology.  
7 We're looking at a hypothetical borrowing. Correct? In other  
8 words, what hypothetically would take place if the government  
9 did not have this cash?

10 A. Let me see if I can put it in my own words. Again, you take  
11 the net monies retained, and that represents money that the  
12 federal government does not have to borrow.

13 Q. Correct.

14 A. And you add to that the interest that would have been paid  
15 on that money that the government would have borrowed, and that  
16 is the cost -- that is the borrowing -- the savings for not  
17 having to borrow for that year.

18 Now, it's hypothetical in the sense that I guess you're  
19 estimating what would have been the case had the government not  
20 had the money, and compared it to the advantages, the benefits  
21 the government derives by having withheld that money.

22 Q. In a way of analyzing it, you're pulling out that cash, and  
23 for purposes of the analysis assuming it's not there; what would  
24 then take place is what you would end up with a benefit,  
25 arriving at the benefit?

1 A. The benefit, the benefit is defined as what the government  
2 would have paid had they not retained the money, and the fact  
3 they didn't pay anything for it because they had the money.

4 Q. So we have a borrowing of some kind that would have taken  
5 place. Correct?

6 A. Let me say it in my own words. If the government retains  
7 \$100 million that otherwise should have been disbursed to the  
8 individual Indians, that is money they do not have to borrow.

9 Q. Now, if the government had borrowed, there would have been a  
10 principal - let's take your \$100 million example - and there  
11 would have been an interest rate, hypothetical interest rate,  
12 and a hypothetical maturity for that borrowing, as there would  
13 be with any debt instrument issued by the government. Correct?

14 A. I don't want to say it's hypothetical. We know what the  
15 10-year borrowing rate was for the federal government for each  
16 of those years. Those are data that have been scrubbed and all  
17 that, and that's a good estimate of the borrowing costs for the  
18 government for that year. So it's not hypothetical.

19 Q. Well, it's hypothetical in the sense that it could have been  
20 any number of different rates, but somebody picked 10 to apply  
21 to this fictitious situation?

22 A. Not fictitious. The government withheld the money. Right?

23 Q. You're assuming the government withheld the money.

24 A. We're assuming the government withheld \$100 million. Had it  
25 not done so, it would have had to borrow on the open market that

1 \$100 million, and the cost of borrowing is approximated by that  
2 10-year rate.

3 Q. All right. Let me ask you this: If the government's  
4 benefit is measured by this borrowing, this sort of constructive  
5 borrowing, if you will, at a particular rate, at a particular  
6 maturity, why, then, would not the benefit to the government  
7 terminate when that hypothetical or constructive loan is paid  
8 off? If it's a 10-year instrument, why would the benefit  
9 continue on for 121 years if it's paid off in 10 years?

10 A. Because the government is still holding that cash.

11 Q. I see. So we're back again to 1887. We're up here, if you  
12 would look at Attachment A on the screen, and that \$179,000 in  
13 column G is never, ever, ever paid back to the Indians, it's  
14 held forever by the government?

15 A. Sir, what the data -- my understanding of the use of the  
16 data is as follows: You have a delta for '87, you have a delta  
17 for '88, you have a delta for '89. That is, withheld funds '87,  
18 withheld funds '88, '89, and so forth. Some of the '87 monies  
19 may be paid out in '88, but what you're looking at for the '88  
20 number is the net; that is, the difference between income and  
21 outflow, how much came in in 1988 (sic) and how much was paid  
22 out. Some of the money paid out in '88 may have been due to the  
23 Indians from '87, but in '88 you still had a net withholding of  
24 monies belonging to the Indians.

25 That is my understanding. I cannot vouch for those

1 individual figures. As I indicated, I have not been retained to  
2 evaluate the veracity of these numbers.

3 Q. Well, again, you have testified that you're vouching for the  
4 methodology. Correct?

5 A. Yes.

6 Q. Now, let's assume that the methodology employed in this  
7 exhibit embodies an assumption that this 30 percent from 1887,  
8 1888, 1889, 1890, and so forth is never disbursed to the  
9 individual Indians. You think that's a reasonable assumption,  
10 based on your experience as director of OMB?

11 A. I think you're mixing two things. As I indicated, you could  
12 have monies owed the Indians that is withheld in 1887, some of  
13 which is paid back in '88, some of which is paid back in '89,  
14 and so forth. It doesn't matter, because what you're looking at  
15 for the figure of 1888 is the net; that is, the revenues that  
16 come in minus the revenues that are going out, some of which  
17 would be to pay Indians for 1888, some to pay Indians for 1887.  
18 And through the years, the same way.

19 Now, the assumption, I understand - and I can't vouch  
20 for it, because, you know, I haven't rigorously evaluated this  
21 data - is that the 70 percent figure is an assumption based on  
22 some evidence that I haven't reviewed, that whatever the  
23 revenues coming in in a given year, the outlays, outlays which  
24 included payments to Indians for previous years as well as the  
25 current year, was 30 percent -- there was a 30 percent

1 difference.

2 Q. All right. So your testimony would be that if there's an  
3 assumption that this 30 percent year to year to year just never  
4 gets paid, that would not be a reasonable assumption?

5 A. I didn't say that at all. I think it is quite reasonable.  
6 Again, based on the data I haven't reviewed, I mean, if the data  
7 is supportive of that assumption -- your point, sir, is very  
8 well taken; that is to say that monies owed to Indians in 1887  
9 might be paid, or some of it be paid in subsequent years. But  
10 that doesn't vitiate this notion that at each subsequent year  
11 there's a shortfall.

12 What you're looking at is the shortfall, and the fact  
13 that an 1887 outlay occurs in 1888 doesn't eliminate the  
14 shortfall, doesn't eliminate the benefit throughout all the  
15 years that the federal government, the taxpayer, the  
16 U.S. government, the United States of America is gaining  
17 throughout the whole period of time.

18 Q. All right. Let's look at 2007 again, the last page of this.  
19 There we see, if we could focus in on the top half of that  
20 document, over to the right a little bit, again, the year 2007  
21 is the last year before the totals, and the difference between  
22 total revenues, which is 336.68 million, and total  
23 disbursements, 235.07 million, do you see that in columns E and  
24 F?

25 A. Yes.

1 Q. So that comes up with this nominal benefit of 101 million.  
2 That's roughly your example of \$100 million net that's withheld  
3 that year?

4 A. For that year.

5 Q. Right.

6 A. As I understand the table. I did not prepare the table, I  
7 do not vouch for the numbers there, I do not -- I haven't  
8 reviewed that carefully, and again, I haven't analyzed the  
9 table. But it appears that that's the case.

10 Q. And again, the benefit is the application of an interest  
11 rate to that amount?

12 A. Well the benefit is the amount they've withheld, plus the  
13 interest on that amount that looks like the 10-year Treasury  
14 rate of 6.22 percent.

15 Q. In making that calculation, wouldn't you want to know the  
16 relative weight of this \$101 million to total government  
17 receipts?

18 A. No.

19 Q. Let's show the Treasury tables.

20 MR. STEMPLEWICZ: Your Honor, this is going to be  
21 marked as defense exhibit next in order 482. If we could go to  
22 the second page of this document.

23 BY MR. STEMPLEWICZ:

24 Q. Have you ever looked at one of these --

25 A. I've looked in my career at many, many tables.

1 Q. You did not look --

2 A. Pardon?

3 Q. You did not look at this particular document or recent  
4 Treasury data in preparing your testimony?

5 A. Oh, I've seen -- from time to time on the computer I have --  
6 on the Internet I have pulled up Treasury charts. I don't  
7 recall this particular one.

8 Q. If we can look at the bottom, say, third of this exhibit  
9 where it talks about fiscal year 2007, and you see there at the  
10 bottom there, total receipts, total receipts of the  
11 U.S. government for 2007?

12 A. Yes, sir.

13 Q. Do you see that number in millions?

14 A. That's 2,567,671,000,000.

15 Q. All right. You think that's fair to ignore this figure in  
16 coming up with a calculation of whether benefit was conferred?

17 A. I think it's perfectly reasonable to ignore that total  
18 revenue figure.

19 MR. LEVITAS: Your Honor, I may be premature in  
20 entering this objection, and if so, I apologize. But it seems  
21 to me that Mr. Stemplewicz is really impeaching his own witness,  
22 Mr. Gregg. And since they are not able to impeach Mr. Gregg  
23 because he is the government's witness who testified under oath,  
24 it's inappropriate for the question to be whether or not you  
25 should ignore the receipts of the United States.

1           Mr. Gregg clearly testified, as was demonstrated  
2 yesterday --

3           THE COURT: Counsel, this is a long speaking objection.

4           MR. LEVITAS: Sorry, Your Honor.

5           THE COURT: The objection is what?

6           MR. LEVITAS: That this line of questioning tends to  
7 impeach the government's own witness, and that's --

8           THE COURT: Well, that's an interesting idea, but I'm  
9 going to overrule it until I find out what the government's  
10 witness is going to testify about.

11           Proceed, Mr. Stemplewicz.

12 BY MR. STEMPLEWICZ:

13 Q. Mr. Miller, you testified yesterday that the government  
14 targets, and I think you said again today, a \$5 billion balance  
15 in the TGA. Correct?

16 A. That's contained in this report of September of 2007.  
17 That's the most recent. And the number can change from time to  
18 time.

19 Q. Do you happen to have any idea of the weekly amount that  
20 goes through the TGA?

21 A. Probably about \$10 billion -- excuse me. Weekly, multiply  
22 that by five working days, \$50 billion.

23 Q. If it was \$300 billion, that wouldn't be out of the realm of  
24 possibilities?

25 A. Some days, some weeks it comes in at big amounts, and

1 sometimes it comes in at little amounts, as if you will look at  
2 that chart that I think Congressman Levitas raised yesterday in  
3 asking me questions.

4 Q. Have you ever heard the expression CIHO? And I don't mean  
5 the K-E-H-O-E variety, but the C-I-H-O variety.

6 A. No, I don't recall.

7 Q. What about what it means spelled out, Cash Investment Held  
8 Outside, does that term mean anything to you?

9 A. No, I don't recall it.

10 Q. If we assume that some of the Individual Indian Money was  
11 held in banks outside the Treasury, particularly in the early  
12 years of the system, would the government have any benefit from  
13 that cash?

14 A. Yes, it would.

15 Q. And how so?

16 A. Well, it still belongs to the government, it is still part  
17 of their reserves, it's still part of the asset base, it's still  
18 part of what they could reach if needed, in the same way that  
19 you have to have balances to avoid the possibility of overdraft.  
20 Now, you might not reach it quite as quickly, but it's still an  
21 asset base.

22 I mean, my understanding, and part of my reading was to  
23 understand what this case was about, is that supervisors would  
24 place these monies in accounts, but the money didn't belong to  
25 the supervisor, it belonged to the United States of America.

1 Q. What if the Treasury said that we don't consider cash held  
2 outside as available to us in making our borrowing decisions?  
3 Assuming that's the case, would your testimony be that the  
4 government does not benefit in that event?

5 A. Well, I would have to look at the context in which such a  
6 statement was made. Because the government can always reach in  
7 and transform assets into cash. I would just have to look at  
8 it, at what they said.

9 Q. Do you have any opinion or idea, based on your knowledge of  
10 government finances, that if as a result of a judgment of this  
11 court the government had to pay a sum of money to the  
12 plaintiffs, where that money would come from?

13 A. Do I have an idea?

14 Q. Yes.

15 A. It would come from taxpayer and also from borrowing.

16 Q. But what cash in the government, what fund in the government  
17 would provide the wherewithal to make that payment, do you know?

18 A. Well, I don't know what the name of the account would be,  
19 but the cash -- the burden for paying would ultimately be borne  
20 by taxpayer and from borrowing, which in a real sense burdens  
21 future generations, burdens taxpayers eventually.

22 Q. I see. But as far as mechanically -- aside from  
23 conceptually, but mechanically, you don't know how that would be  
24 accomplished?

25 A. I wouldn't propose here to write the order to the federal

1 government to pay whatever the judge decides is the appropriate  
2 amount.

3 Q. You talked about the Troika, the Director of OMB, Secretary  
4 of Treasury, Chairman of Council of Economic Advisors. Correct?

5 A. Yes.

6 Q. When they meet, they really don't get down into the details,  
7 the numbers, do they?

8 A. Well, you get into the aggregate numbers. And the Troika  
9 meets -- I mean, a lot of the discussion is what is the  
10 employment rate likely to be, what are interest rates likely to  
11 be, what is this, that, and the other. All of this affects  
12 total receipts to the government, the forecast of total  
13 receipts, forecast of total outlays, especially for entitlement  
14 spending, and the derivative total debt -- excuse me, the total  
15 deficit that would be run for that year.

16 I don't want to give the impression that's all we sat  
17 and talked about. We talked about that and we talked about  
18 other economic policy issues as well. But in terms of talking  
19 about what you just raised, it was at a very aggregate level.  
20 We didn't sit down and talk about cash management from  
21 day to day, week to week.

22 Q. Right. It was at a high level. It was not, gee, how many  
23 billions do we need to borrow this week to have five billion in  
24 the TGA?

25 A. That's correct. Though our staff did interact on those more

1 micro matters.

2 Q. Would you say that the debt management function that's  
3 performed by the staff is a very complicated process?

4 A. It's not all that complicated. It is labor intensive,  
5 because you've got to make a lot of decisions every day; there's  
6 advisory groups that give advice, and, you know, whether you go  
7 long, go short, these kinds of things.

8 So I don't want to oversimplify it, because it's quite  
9 labor intensive, but it's -- on the other hand, it's not beyond  
10 understanding the basic principles.

11 Q. I think you testified that the Financial Management Service,  
12 FMS, makes the borrowing decisions.

13 A. Well, they interact with the Bureau of Public Debt in  
14 deciding where to go, and they each have their advisors. They  
15 both report to an assistant secretary for finance, for domestic  
16 finance, and up to an undersecretary and the secretary,  
17 et cetera.

18 So, I mean, sort of a similar way of thinking; FMS sort  
19 of sets the overall parameters and the Bureau of Public Debt  
20 sort of carries it out.

21 Q. For example, former Commissioner Gregg, whose testimony we  
22 looked at, he was the former commissioner of FMS. He wouldn't  
23 do the sign-off, he wouldn't be the decisionmaker on how much to  
24 borrow?

25 A. Well, he was a particularly good witness because he had been

1 head of both bureaus. He had been head of Public Debt,  
2 commissioner of Public Debt, commissioner of FMS.

3 Q. But as commissioner of FMS, he did not make the decisions,  
4 or you're not sure?

5 A. I'm not sure of the details, but basically the two interact.

6 Q. So you don't know whether there's a specific committee that  
7 meets or what the number of members of that committee would be,  
8 would you?

9 A. I don't know those details, and it changes from  
10 administration to administration, I suspect.

11 Q. Would you assume that the people who make the decisions are  
12 highly qualified to do that?

13 A. Yes. They're very high level professionals in Treasury, is  
14 my experience.

15 Q. What sort of things do they look at, would you expect, from  
16 your experience, in making the determination of what amount to  
17 borrow would be?

18 A. Well, what takes up the majority of their time, I would  
19 presume, is the fluctuations from day to day and how to make  
20 decisions about parking money overnight or not parking money  
21 overnight, or looking down the road a few days and having to  
22 borrow, and they issue these various bills and bonds. I mean,  
23 it's more tactical -- what occupies their time is more tactical  
24 than strategic.

25 Q. Do you know what the sort of big ticket items they look at

1 on the receipts side would be?

2 A. Individual income tax returns, corporate income tax returns,  
3 excise tax returns, obviously Social Security monies withheld,  
4 and Medicare/Medicaid.

5 MR. STEMPLEWICZ: Could we have that exhibit again, I  
6 think it's 487, the Treasury tables? And if we could go to the  
7 fifth page, please.

8 BY MR. STEMPLEWICZ:

9 Q. All right. We're going to try to expand the top portion,  
10 which is budget receipts, and if we could look a little bit over  
11 to the left and get that far left side in there.

12 And you see there up on the top portion, budget  
13 receipts, and those are the kinds of categories you were talking  
14 about?

15 A. Yes.

16 Q. Now, obviously there's no category there for Individual  
17 Indian Monies. Correct?

18 A. Well, I presume it comes under miscellaneous receipts down  
19 at the bottom. There's no category for Individual Indian  
20 Monies.

21 Q. You're assuming it, but you don't know for sure whether it  
22 falls under miscellaneous receipts?

23 A. I'm assuming that. Yes, go ahead.

24 Q. Do you know what phrase is used to describe the United  
25 States Treasury's debt management strategy? I mean, you've

1 given some description about the kinds of considerations that  
2 are employed in making decisions, but have you ever heard of a  
3 specific phrase that's used to describe that process?

4 A. I don't recall a specific phrase.

5 Q. Do you ever read the Federal Reserve Bank of New York's  
6 Economic Policy Review?

7 A. I have read pieces from it in the past, but very, very  
8 sparse review of that.

9 Q. All right. But you didn't do any research into that debt  
10 management strategy before testifying in this case. Correct?

11 A. No. That's correct. Excuse me.

12 Q. Do you know whether the government ever borrows more than it  
13 has to borrow to meet its cash needs?

14 A. I'm sure it does in an ex post sense; that is to say that it  
15 may borrow money and then it finds out that revenues come in  
16 greater than anticipated, outlays come in less than anticipated.  
17 So after the fact you would say, well, we borrowed more than we  
18 had to.

19 But ex ante, that is to say at the forecast level, I  
20 would be surprised if the government purposely borrowed more  
21 than it needed.

22 Q. Well, let's take April, when income tax receipts are coming  
23 in, and the government -- let's assume that is the most flush  
24 with cash throughout the year that the government is. And  
25 further assume that the government does continue to borrow even

1       though it has very high levels of cash.

2                   Do you have any concept of why the government would do  
3       that?

4       A.   Well, I mean, the government may make -- could make an  
5       informed decision that this is a good time to go in the market  
6       and secure -- to borrow.   Even though we're flush right now, we  
7       may place some money in overnight.   It's conceivable,  
8       conceivable.   I haven't reviewed the data, that you might even  
9       find situations where the short-term return to excess cash  
10      balances by parking them overnight exceeds the cost of borrowing  
11      at the margin.   And in that situation it would make sense to go  
12      ahead and borrow.

13                   But that would be a fact-based question, or to answer  
14      that question I would have to know facts.

15      Q.   Conceivably one of the reasons could be that there's a  
16      bargain to be had here, and it's better to pay a little bit now  
17      to save a lot later.   Is that reasonable to hypothesize?

18      A.   I think there would be rare instances.   I mean, such  
19      instances would be -- I responded to your question by saying  
20      yes, I could see a situation in which that might occur.   It's  
21      probably fairly rare that that kind of situation would occur,  
22      but it could occur.

23      Q.   When you were director of OMB, did you have any interface  
24      with major money market centers, the big banks, Bank of America,  
25      Chase, and those sorts who buy government securities?

1 A. I did not make presentations, to my recollection. I made a  
2 lot of presentations where people who are in that market were  
3 there, but I didn't go hand in hand to such brokers and people  
4 who purchased government debt, plead with them or anything like  
5 that.

6 Q. Have you ever looked into the expectations of these money  
7 market centers in regard to the debt issuances of the  
8 United States Treasury?

9 A. Sir, in my tenure as budget director and my many years of  
10 teaching economics, I read a lot of things like that. But I  
11 don't recall and I don't hold myself out as an expert on  
12 expectations about lending and about government debt finance.

13 Q. Is there any bigger borrower in the United States in the  
14 money markets than the United States Treasury?

15 A. No.

16 Q. And that's pretty much by a long shot, isn't it?

17 A. Yes.

18 Q. Do you know what minimum increment the government borrows  
19 at?

20 A. I don't know the minimum increment.

21 Q. I mean, would they say, we're not getting this 100 million  
22 this year from the individual Indians, so we have to go out and  
23 borrow another 100 million? They wouldn't do that, as far as  
24 you know, or you don't know?

25 A. Implicitly, yes. I mean, they don't write down, hey, we got

1 100 million from the Indians this year so we don't go borrow  
2 that. I mean, they know what cash is on hand in the TGA, and  
3 they make decisions about borrowing based on expectations about  
4 outlays and avoiding overdraft, having overdraft protection and  
5 so forth.

6 Q. On a weekly basis, that 100 million that's in the table we  
7 looked at would be roughly two million. Correct?

8 A. Pardon?

9 Q. On a weekly basis, that annual 100 million of net receipts  
10 comes to about two million, more or less?

11 A. Yeah, 100 divided by 56.

12 Q. So to the extent there's an impact, these money managers  
13 would say, well, we have another two million coming in from IIM,  
14 so we don't need to borrow X amount, you wouldn't know how that  
15 comes into the decision-making process?

16 A. I mean, it all goes in the fund, and they look at the total  
17 of the fund and expectations about outlays. So they don't  
18 segregate out, well, here's two million and here's something we  
19 count or we don't count.

20 Q. What borrowing decisions, if any, were you personally  
21 involved in in your tenure as OMB director?

22 A. I was not engaged in the tactics and the daily borrowing  
23 decisions and marketing of securities and so forth. That was  
24 not my role.

25 Q. And as I understand it, for the same reason, your knowledge

1 in this area wouldn't extend back 100 years before you were OMB  
2 director?

3 A. Hardly. Nothing more than what I read.

4 Q. Is your opinion that you provided to the Court in your  
5 testimony yesterday based on anything other than an endorsement  
6 of former Commissioner Gregg's testimony from 1999?

7 A. I'm not sure I understand the question. I read  
8 Commissioner Gregg's testimony, I've read the GAO reports and  
9 others. I draw on my own personal experience at OMB, my own  
10 personal experience when I was on the Council of Economic  
11 Advisors, my own personal experience when I was teaching  
12 economics at university level and graduate students and so  
13 forth. I mean, my expertise is broader than just having read  
14 Commissioner Gregg's testimony.

15 Q. Do you remember in Commissioner Gregg's testimony that he  
16 described the Individual Indian Monies as a deposit fund?

17 A. I think he used that term at some point.

18 Q. Okay. Do you have any idea of -- I think you say one of the  
19 things you looked at in preparing your testimony was OMB  
20 Circular A-11, that thousand-or-so-page publication?

21 A. Right.

22 Q. Do you recall anything in there about deposit funds and how  
23 they're defined?

24 A. Yes. And I'm not sure that Commissioner Gregg didn't  
25 misspeak there, or whether he was using the term in a generic

1 way. I just know the money goes into the TGA, and what they  
2 look at is the base.

3 It's like trying to distinguish between a checking  
4 account that belongs to Mary Smith and one that belongs to  
5 Sam Jones. On the other side of the teller's window, the money  
6 is all fungible and intermingled.

7 MR. STEMPLEWICZ: Could we have Circular A-11?

8 Your Honor, the exhibit next in order is an excerpt.  
9 It's Section 20, actually, from OMB Circular A-11 that  
10 Mr. Miller testified about.

11 BY MR. STEMPLEWICZ:

12 Q. I'll represent to you this is not the entire thousand-page  
13 document.

14 A. Okay.

15 Q. But we don't need the rest of it, at least right now.

16 MR. STEMPLEWICZ: Could we go to page 39, please.

17 BY MR. STEMPLEWICZ:

18 Q. You see the highlighted part there, the discussion of  
19 deposit funds. You see where it says, "You use deposit funds to  
20 account for monies that do not belong to the government. This  
21 includes monies held temporarily by the government until  
22 ownership is determined, such as earnest money paid by bidders  
23 for mineral leases, or held by the government as an agent for  
24 others." Do you see that?

25 A. Yes.

1 Q. And a little further down it says, about the fifth line  
2 down, "We exclude deposit fund transactions, as such, from the  
3 budget totals because the funds are not owned by the  
4 government."

5 A. Yes, I see that.

6 Q. You see that.

7 MR. STEMPLEWICZ: If we could go back two pages to 37.  
8 I've thrown a little curve to our technical fellow here, so it  
9 may take a minute or so.

10 BY MR. STEMPLEWICZ:

11 Q. But if you recall, the deposit fund that Commissioner  
12 Gregg -- former Commissioner Gregg testified about was 14X-6039.  
13 The last four digits were 6039. And up on the screen is another  
14 page from Circular A-11 -- and by the way, these circulars were  
15 published under the organization that you headed. You have some  
16 at least general knowledge of what subjects they covered.

17 And obviously to get into all the details after many  
18 years, I don't expect you to know, but certainly you can look at  
19 the bottom category there of deposit funds, and you see where it  
20 says the 6000 through 6999 series is used to record deposits and  
21 disbursements of monies not owned by the government or not  
22 donated to the government.

23 So wouldn't that seem to indicate that if 14X-6039 is  
24 the account we're looking at here, that it is, in fact, as  
25 former Commissioner Gregg said, a deposit fund?

1 MR. LEVITAS: Your Honor, I'm going to renew the  
2 objection I made before about impeaching his own witness.

3 MR. STEMPLEWICZ: Your Honor, I'm not impeaching the  
4 witness, I'm just confirming what he said.

5 MR. LEVITAS: If I can complete my statement and  
6 objection. Commissioner Gregg testified that --

7 MR. KIRSCHMAN: Your Honor, the record speaks for  
8 itself. This is a speaking objection.

9 THE COURT: Wait, wait, wait. This is not a tag team  
10 here. Mr. Stemplewicz will speak for the government while he's  
11 up.

12 MR. LEVITAS: Your Honor, Mr. Gregg testified that the  
13 IIM money, the deposit fund which Dr. Miller says may have been  
14 misidentified, is part of the Treasury, and goes into the  
15 general account, and it's not treated any differently from any  
16 of the other 1,200 accounts in the Treasury General Account.

17 And trying to suggest that it is a different -- being  
18 treated differently goes directly against what  
19 Commissioner Gregg testified to.

20 THE COURT: Well, Commissioner Gregg's testimony is not  
21 before me. I don't know whether he's impeaching or disagreeing  
22 or undercutting or whatever he's doing, but your objection is  
23 overruled.

24 Proceed, Mr. Stemplewicz.

25 BY MR. STEMPLEWICZ:

1 Q. Picking up on this idea of the budget that was mentioned in  
2 your testimony yesterday, and also was mentioned in the  
3 definition of deposit funds, you said that one of your major  
4 roles as director of OMB was to translate the President's policy  
5 into a budget. Does that pretty much sum it up?

6 A. Yes.

7 Q. In doing so, did you rely upon data provided by the Treasury  
8 Department?

9 A. Yes. And other agencies as well.

10 Q. Did you have any reason to question the reliability of the  
11 data you received from Treasury?

12 A. No specific reason to question any specific data. I would  
13 question analyses from time to time, but Treasury is very good  
14 about its data, from my experience at the time.

15 Q. Do you know what the term "operating cash" refers to in  
16 government financial parlance?

17 A. There's so many definitions, and so many of these  
18 definitions are loosey-goosey and used by different people to  
19 mean different things. I wouldn't want to comment on that.

20 Q. What was your role as OMB director with regard to  
21 legislation? How did you interface with the Congress in that  
22 regard?

23 A. Well, at the time, which I understand is not the prevalent  
24 mode or not the exact same mode today, the statement of  
25 administration positions on legislation all went through my

1 hands; that is to say, the OMB director's signed letters, they  
2 were signed by an auto pen, but basically sending up the  
3 Administration's position on major legislation, whether it was  
4 to a subcommittee, a full committee, to either house or to the  
5 joint committee or whatever, votes on the floor of each house.  
6 So there was that interaction.

7           There was interaction especially with the budget  
8 committee and appropriations committee, and the Ways and Means  
9 of the House Finance Committee in the Senate, where I went up  
10 and my associates went up and met with members of Congress and  
11 with their staffs trying to work out details of budget matters  
12 and appropriations and changes in these so-called mandatory  
13 spending programs, and also in taxes.

14 Q. Aside from budget type legislation, other kinds of  
15 legislation, would you be concerned in your role as OMB director  
16 that such legislation was consistent with the policies of the  
17 Administration?

18 A. Oh, yes. I mean, our goal was to secure legislation  
19 comporting with the President 's policies. From time to time we  
20 would recognize that some policy the President was pursuing  
21 would not sell on Capitol Hill, so we would compromise or we  
22 would take a different approach or something like that. We had  
23 authority to make those initiatives. Cabinet members, the  
24 Secretary of Treasury in particular, especially on the tax side,  
25 we would try to negotiate those matters out.

1 Q. And if some proposed legislation emanated from a Congress  
2 rather than the Administration, again, this would be a policy of  
3 the Congress that's being proposed to be enacted into law.

4 Correct?

5 A. Yes.

6 Q. So there would be sort of this confluence of legislative  
7 policy, executive policy. Correct?

8 A. Well, let me see if I can put it in my words. The President  
9 would propose legislation, sometimes explicitly, most of the  
10 time implicitly, in the budget proposals that he sent to the  
11 Congress at the first of every year for the fiscal year  
12 beginning October 1st of that year, and then Congress -- you  
13 know, members of Congress would introduce bills. And those were  
14 typically ignored unless the relevant committee took them up and  
15 looked like they might move forward on some legislation.

16 And at that point the Administration would be usually  
17 asked for its views, members of the committee or the chairman,  
18 ranking member of the committee would ask the President for the  
19 Administration's views, or ask the budget director or ask the  
20 Secretary of Commerce or whomever it might have dealt with most  
21 specifically. But even those would go through OMB to coordinate  
22 the Administration's views on proposed legislation.

23 Q. Now, are you familiar with the 1994 American Indian Trust  
24 Fund Management Reform Act?

25 A. I read something about it. I am not an expert on that act.

1 Q. That was not during your tenure. Correct?

2 A. That's correct.

3 Q. You were sitting in the courtroom yesterday when some  
4 provisions of that act were put up on the screen dealing with  
5 the requirement in that act to invest Individual Indian Monies?

6 A. I recall something to that effect. I did not have my  
7 glasses, sir, with me, and I couldn't read what was on the  
8 screen.

9 Q. Well, how about in hearing what was said by  
10 Professor Laycock in regard to Professor Langbein's testimony,  
11 when he discussed statutes as being in effect the trust  
12 instrument for the Indian Trust? Do you recall hearing that?

13 A. I recall discussion about legal principles on which I would  
14 not opine.

15 Q. Now, based on the experience you had as OMB director, what  
16 would you expect the kinds of considerations would be to go into  
17 whether the President would agree to sign legislation requiring  
18 the Secretary of the Interior to invest Individual Indian  
19 Monies? Any ideas, based on your experience, how that would  
20 proceed?

21 A. Well, let me not comment on this particular piece of  
22 legislation, but generically, if the legislation is of really --  
23 of key importance to the President, it may be something  
24 relatively small in the scope of things but something the  
25 President is particularly interested in; it may be something

1 that has big money effects, it may be something that has effects  
2 down the road. For whatever reason the President might have  
3 particular interest in it, the Administration's policy is  
4 whatever the President says.

5 On the other hand, if it's an issue which doesn't rise  
6 to the level of the President's direct personal involvement,  
7 there will be views expressed by the various agencies, and OMB's  
8 role was at that time -- not necessarily now. It's a little bit  
9 different, I understand. But at that time was to get the  
10 parties together and discuss the issues and resolve them in some  
11 way.

12 And if they couldn't be resolved, to raise it to a  
13 higher level; that is, typically it would be the Economic Policy  
14 Council, which was a group of cabinet officers, or the Domestic  
15 Policy Council, or the National Security Council for discussion  
16 and resolution. And if there was a lack of resolution there, or  
17 very strong views to the contrary, raise it directly with the  
18 President.

19 Q. Just a few final thoughts here, Mr. Miller. Assume that a  
20 superintendent of an agency, of the Bureau of Indian Affairs,  
21 decided that it would be a good idea to pay interest on  
22 Individual Indian Money that's held, and started doing that,  
23 started cutting checks to that effect. Without legislation,  
24 would that individual be authorized to do that?

25 A. Well, I don't think an agency head could do that unless

1 there were authorizing legislation of some kind. But I'm not --  
2 I don't know what the law is, I don't know what the relevant  
3 statutes are, so -- but just generically, no one in the federal  
4 government is empowered to write checks to people unless they  
5 have authority of some kind.

6 MR. STEMPLEWICZ: No further questions, Your Honor.

7 MR. LEVITAS: Your Honor, I have some questions on  
8 redirect.

9 THE COURT: All right, sir.

10 **REDIRECT EXAMINATION**

11 BY MR. LEVITAS:

12 Q. First of all, Dr. Miller, I wanted to follow up on a few  
13 specific points that were brought out in your discussion just  
14 now. One of them relates to questions about the 10-year  
15 Treasury bill. Do you know whether the interest rate on the  
16 10-year Treasury bill is considered at the high end or the low  
17 end of the spectrum of interest-bearing securities?

18 A. It tends to be more in the middle. You have a so-called  
19 yield curve; that is, the short run versus long run, et cetera,  
20 sometimes it goes up this way, sometimes it goes this way,  
21 talking about being regular, inverted, or whatever. But for a  
22 long period of time, a 10-year bond rate is a good approximation  
23 of the cost of borrowing.

24 Q. Would you consider the 10-year bond rate a reasonable  
25 measure to assume in the type of calculation that you were

1 looking at?

2 A. Yes.

3 Q. The questions relating to deposit of funds in commercial  
4 banks, of IIM funds in commercial banks, were those funds  
5 available to the Treasury Department or did they belong to some  
6 third party?

7 A. Well, they belong -- I mean, I guess it would be a case of  
8 fraud if they were claimed by an individual rather than the  
9 federal government, because they're not individuals' money,  
10 they're federal government's money.

11 Q. So they are, then, available, when wanted, by the Treasury  
12 Department?

13 A. Yes.

14 Q. Let me ask you another question. You were asked about the  
15 appropriation necessary to expend funds from the Treasury, and  
16 you commented that there are some appropriations which are  
17 permanent in nature. Is that correct?

18 A. Yes.

19 Q. Are you familiar with an appropriation which is a permanent  
20 and indefinite appropriation known as the judgment fund?

21 A. I'm not familiar with it. I mean, I have no expertise on  
22 that.

23 Q. The deposit account that was referred to, do you know  
24 whether the government has accounted for all IIM monies in the  
25 deposit account?

1 A. I have not made a study of this. I couldn't comment with an  
2 informed judgment about it.

3 Q. When Mr. Gregg, Commissioner Gregg, testified that the IIM  
4 funds which were held in the Treasury were treated no  
5 differently than any other funds in that account --

6 A. Right.

7 Q. -- what does that mean?

8 A. Well, I mean, there's a constant confusion over what is an  
9 account and what is money. Okay? It's like I have a deposit in  
10 the PNC bank, you have a deposit in the PNC bank, and we keep  
11 talking about our accounts, you know, but the money behind the  
12 teller's window is fungible.

13 So Commissioner Gregg, when he talked about maybe the  
14 trust account, he's talking about whose name is on this account,  
15 but the money is behind the teller's window and it's all  
16 fungible. It's all there, it's all accessible, it's all what  
17 the government takes into account in deciding -- making  
18 borrowing decisions.

19 MR. LEVITAS: I would ask that the final monthly  
20 Treasury statement be displayed, please, that Mr. Stemplewicz  
21 had asked us to look at. And would you go to page 30 in that  
22 report, please.

23 BY MR. LEVITAS:

24 Q. And if you would look at that, Dr. Miller, and in particular  
25 the left-hand column called receipts and the items that are

1 included in those calculations, you see where there are a list  
2 of government trust funds identified?

3 A. Yes, sir.

4 Q. All right. And would you look down to the last item in that  
5 listing of the funds identified there, all other trusts?

6 A. Yes, sir.

7 Q. All other trusts?

8 A. Yes, sir.

9 Q. Now, do you know one way or the other whether that includes  
10 the IIM trust funds as well?

11 A. No, I do not.

12 Q. And the fact that the IIM trust funds are not otherwise  
13 identified in that list does not mean it is not included in that  
14 last category?

15 A. Absolutely.

16 Q. Okay. Now, again, I want to get back to what you testified  
17 to yesterday and what you agreed with in Commissioner Gregg's  
18 testimony, that funds collected by the government on behalf of  
19 the IIM Trust beneficiaries which were not otherwise disbursed,  
20 and remain in the Treasury, constitutes a significant and  
21 quantifiable benefit to the government.

22 A. That's correct.

23 Q. And that is still your testimony?

24 A. It is.

25 MR. LEVITAS: Thank you, Your Honor. I have no further

1 questions.

2 THE COURT: Dr. Miller, just to make sure that I  
3 understand some of your testimony, the last question and answer  
4 summarizes, it seems to me, your testimony, which is essentially  
5 that any money that has not been disbursed to Individual Indian  
6 Money accountholders is in the TGA and is a benefit to the  
7 government, and the methodology applied by the plaintiffs of  
8 applying an interest rate to it that the government would have  
9 had to borrow money is a proper methodology. Right?

10 THE WITNESS: That's correct, sir.

11 THE COURT: Okay. But you are not sure and don't know  
12 whether investments made with IIM funds, if any, are what one of  
13 the lawyers, I guess Mr. Stemplewicz, called free-roaming cash,  
14 you don't know if that money is in the TGA and should be used,  
15 should be calculated the same way?

16 THE WITNESS: Well, sir, my understanding is that the  
17 monies were either put directly in the TGA or they were in  
18 commercial banks, but they were still owned by the federal  
19 government and still accessible by the federal government. And  
20 because of that, they would be considered in the decision to  
21 borrow, and for that reason, monies withheld, whether they're in  
22 the -- and I don't know how much was held in commercial banks as  
23 opposed to the TGA, but monies held in commercial banks, like  
24 monies directly in Treasury's TGA, would be considered in  
25 decisions about borrowing.

1           And so in either case, the money would be of benefit to  
2 the federal government.

3           THE COURT: And is it your testimony that money that is  
4 on deposit in commercial banks, which you say is available to  
5 the government when it wants it, is in fact taken into account  
6 when the day-to-day borrowing decisions are made?

7           THE WITNESS: I believe so.

8           THE COURT: What is the basis of that belief?

9           THE WITNESS: Because the federal government could pull  
10 those funds back into the TGA to cover checks that it is  
11 issuing.

12           THE COURT: Well, let's assume that it could. My  
13 question to you is whether you know as a matter of fact, either  
14 by your own personal knowledge or because of your expertise,  
15 that when the government makes those day-to-day borrowing  
16 decisions that you've been talking about, they in fact do  
17 include in the calculus money that is on deposit in commercial  
18 banks.

19           THE WITNESS: Good question, judge. I do not have that  
20 knowledge, personal knowledge of that. It seems very reasonable  
21 that they would be considered, but I do not have such personal  
22 knowledge.

23           THE COURT: All right. And the same basic question  
24 applies to this discussion of deposit funds that we've had. You  
25 say there's a difference between funds and accounts. Do you

1 know, either of your own personal knowledge or based on your  
2 expertise, that when the government makes those day-to-day  
3 borrowing decisions that you're talking about, that in fact they  
4 include money that is in deposit funds like this 14X-6039 when  
5 they're deciding how much money they have on hand?

6 THE WITNESS: I haven't -- Your Honor, I haven't talked  
7 with the people who make these day-to-day decisions. I haven't  
8 been involved with the tactics, as I've described. I was more  
9 at a strategic level.

10 THE COURT: But again, it sounds reasonable?

11 THE WITNESS: It sounds very reasonable. In fact,  
12 monies that come in, the people who are looking and making these  
13 daily decisions recognize, well, you've got to pay Social  
14 Security checks -- I mean, a lot of the monies that come in in a  
15 sense are owned by other people, or they're already spoken for,  
16 and so you're looking at this total volume of funds that are  
17 available and making the decisions about how much you need to  
18 borrow. I mean, they're day-to-day decisions about how much to  
19 borrow, and if you have extra, then you don't have to borrow  
20 that.

21 THE COURT: It would be fair to say, then, Dr. Miller,  
22 that your testimony is sound theoretically, it's sound  
23 economics, it's sound common sense, but you don't have any  
24 personal knowledge of the mechanics of how these day-to-day  
25 decisions are made?

1 THE WITNESS: I do not have such personal knowledge,  
2 no.

3 THE COURT: Thank you, sir.

4 MR. STEMPLEWICZ: I have a very short recross based on  
5 Mr. Levitas' questions.

6 Could we please go back to Circular A-11? If we could  
7 go again to page 39, where we were talking about deposit funds.

8 **REXCROSS-EXAMINATION**

9 BY MR. STEMPLEWICZ:

10 Q. You remember, Dr. Miller, when we talked about deposit funds  
11 in this definition. Now, if we went back one page to page 38 --

12 MR. STEMPLEWICZ: And by the way, Your Honor, this will  
13 be Defense Exhibit 483.

14 BY MR. STEMPLEWICZ:

15 Q. You see down there at the bottom, trust funds is defined?

16 A. Well, there's a heading that says "trust funds."

17 Q. Right. Now, would you think that something could be both a  
18 trust fund and a deposit fund, or you don't know?

19 A. They're probably categorized differently, yes, whether it's  
20 one or the other.

21 Q. And the table that Mr. Levitas showed you from here, I think  
22 it was Table 8 from the Treasury monthly statement, talked about  
23 trust funds, not deposit funds. Correct?

24 A. I don't recall. I accept, subject to check, although I know  
25 these terms, "trust funds," are used very generically as well as

1 in very specific ways.

2 Q. All right.

3 MR. STEMPLEWICZ: No further questions, Your Honor.

4 I'm sorry, Your Honor, I misspoke. This is not 483,  
5 this is already previously marked as 466. And we would move for  
6 the admission at this time of Defendant's Exhibit 466, which is  
7 Circular A-11, and Defendant's Exhibit 487, which is the final  
8 monthly Treasury statement.

9 MR. LEVITAS: Your Honor, we would like that entire  
10 document.

11 MR. STEMPLEWICZ: Entire Circular A-11 is available on  
12 the Internet at the OMB website.

13 THE COURT: That's the new world we're operating in.

14 MR. LEVITAS: I gather that.

15 THE COURT: You'll get it.

16 (DEFENDANT Exhibits 466, 487 were moved into evidence.)

17 MR. LEVITAS: Your Honor, I have one last question in  
18 light of a question on recross.

19 THE COURT: All right. Go ahead.

20 **FURTHER REDIRECT EXAMINATION**

21 BY MR. LEVITAS:

22 Q. I would request that the testimony of Commissioner Gregg be  
23 displayed, and page 3310.

24 THE COURT: Who are you requesting that of?

25 MR. LEVITAS: Antonio.

1 THE COURT: Then I think it will probably happen.

2 MR. LEVITAS: I hope so.

3 BY MR. LEVITAS:

4 Q. Now, Dr. Miller, let's see, 3310, lines eight through 24.

5 Based on your reading of Commissioner Gregg's testimony, does it  
6 appear that the deposit fund account which he has referred to is  
7 any different from any of the other accounts held by the  
8 Treasury?

9 A. No, he's saying --

10 MR. STEMPLEWICZ: Objection. Speculation.

11 THE COURT: Yeah, I'm not sure that Dr. Miller's  
12 analysis of somebody else's testimony is of much help to me,  
13 counsel. I mean, the other testimony is what it is, but I --

14 MR. LEVITAS: I wanted to make sure that Dr. Miller  
15 agreed with the conclusion that Commissioner Gregg reached,  
16 because Commissioner Gregg says there's nothing unusual about  
17 these deposit funds account; they're treated the same way in the  
18 Treasury as any other account. If he doesn't agree with that,  
19 then I would like to know it. If he does, I would like to know  
20 it.

21 THE COURT: I think he just told me that he doesn't  
22 know mechanically how these deposit accounts are used. If you  
23 want to pursue that question, you can, but it seems to me he's  
24 already basically disclaimed expertise on the subject.

25 THE WITNESS: Your Honor, with due respect, I think I

1 do have some confidence that the money goes into the Treasury,  
2 it's labeled this account. But it's like, again, at your  
3 commercial bank you have an account, but the money goes in the  
4 back and it's commingled. I think that's what he's saying  
5 there, I think.

6 THE COURT: And you think that what he's saying is  
7 correct?

8 THE WITNESS: I do.

9 THE COURT: But you still don't have any personal  
10 knowledge of exactly how the borrowing decisions are made, and  
11 whether the money that's in these accounts are used when the  
12 borrowing decisions are made?

13 THE WITNESS: Your Honor, I haven't been in that office  
14 and observed the meetings that take place, the descriptions. I  
15 have recalled from being at OMB, consistent with things that I  
16 have read in preparation for this trial, and so it's all  
17 consistent with that, but I have not sat in such tactical  
18 meetings and participated.

19 THE COURT: Can you answer this question, which also  
20 comes from a sort of high level of generality about this  
21 process? You're talking about the day-to-day borrowing  
22 decisions of the Treasury Department. Right?

23 THE WITNESS: Well, sir --

24 THE COURT: Every day somebody -- I mean, and I'm sure  
25 this does happen every single day.

1 THE WITNESS: Right.

2 THE COURT: Somebody looks at the situation and says,  
3 we're going to have to issue so many bonds or we're going to  
4 have to go to the market for so many dollars, and we're going to  
5 do it this Monday or next Tuesday or something like that.  
6 Right?

7 THE WITNESS: Uh-huh. Yes, sir.

8 THE COURT: Can you tell me whether that decision is  
9 based on the amount of money that's in the pot today or on the  
10 amount of money that's in the pot today plus expected  
11 disbursements and revenues?

12 THE WITNESS: It's based -- I mean, a decision to go to  
13 the markets next week would be based on forecasts of what  
14 disbursements would be, what revenues would be, what the needs  
15 would be next week. At a strategic level you're looking  
16 forward, and the further in the future that you look, the more  
17 you might characterize the policy as strategic policy rather  
18 than tactical.

19 The persons making the decision every day are really  
20 almost going through an algorithm, a very routine kind of thing,  
21 and deciding how much to be proffered at the next offering.

22 THE COURT: A routine but complicated algorithm?

23 THE WITNESS: Yes, sir.

24 THE COURT: And one that nobody in this courtroom  
25 actually knows?

1           THE WITNESS: But again, it's the difference between  
2 tactics and strategy. The tactics are designed to meet the  
3 needs of the government, and those needs are predicated on how  
4 much -- what kind of balances the federal government should  
5 have. That's one reason that in these publications they make  
6 the rather sweeping statement that we target \$5 billion as a  
7 balance to assure -- to ensure against overdraft. Now, that's  
8 their strategic -- how to get there is what these people do  
9 every day in making sure that they can cover that -- that the  
10 federal government maintains that kind of balance.

11           THE COURT: Thank you, sir.

12           MR. LEVITAS: Thank you, Your Honor.

13           THE COURT: All right, Dr. Miller. I think that  
14 concludes your testimony. You're excused, sir.

15           THE WITNESS: Thank you.

16           MR. GINGOLD: Your Honor, plaintiffs call Dr. Bradford  
17 Cornell.

18                   (Oath administered by Courtroom Deputy.)

19           MR. GINGOLD: Your Honor, I have Dr. Cornell's CV.  
20 Would you like a hard copy?

21           THE COURT: Yes, please. Hand it up.

22           MR. GINGOLD: Your Honor, plaintiffs are proffering  
23 Dr. Cornell as an expert in financial economics and statistics.  
24 He has a fairly lengthy CV, so I'll summarize it.

25                   His academic background is an AB from Stanford

1 University, an interdepartmental AB in physics, philosophy, and  
2 psychology. He earned that degree in 1970 and he was phi beta  
3 kappa. He earned an MS in statistics from Stanford in 1974, and  
4 he earned his Ph.D. in financial economics at Stanford in 1975.

5 He is a senior consultant with CRA, and he is a  
6 visiting professor at California Institute of Technology in  
7 financial economics.

8 He is recognized internationally as an academic in  
9 financial economics, and he is a consultant in that field. He  
10 has been twice chairman of the finance department at UCLA, twice  
11 chairman of the Andersen School at UCLA, three-time member of  
12 the staffing and promotion committee at UCLA.

13 He has written many books, articles, and he's provided  
14 many lectures with regard to financial economics, and he has  
15 developed many models with regard to the issues that are  
16 associated with the Cobell case. He has developed both damages  
17 models and restitution models.

18 Your Honor, we would like to proffer Mr. Cornell as an  
19 expert, and he will be able to speak to the model that  
20 establishes plaintiffs' belief of the award that is appropriate  
21 under the circumstances in this case.

22 MR. WARSHAWSKY: We have no objection, Your Honor.

23 THE COURT: All right. He's certainly well qualified.  
24 You may proceed.

25 MR. GINGOLD: Thank you, Your Honor.

1 (DR. BRADFORD CORNELL, PLAINTIFF witness, having been duly  
2 sworn, testified as follows:)

3 DIRECT EXAMINATION

4 BY MR. GINGOLD:

5 Q. Dr. Cornell, or Professor Cornell, what is the purpose of  
6 your testimony in this matter?

7 A. To develop a restitution economic model that can be used in  
8 conjunction with data regarding receipts and disbursements of  
9 Individual Indian Monies, to estimate the benefit to the  
10 government from holding those monies at various points in time.

11 Q. Have you developed models of this sort before throughout  
12 your career?

13 A. Yes.

14 Q. What have you done in that regard generally?

15 A. Well, I worked on matters, for example, involving the  
16 Holocaust in World War II, the Armenian Holocaust. Those are  
17 probably the most similar, where people were damaged because  
18 funds allegedly due them were withheld by an organization; in  
19 the Holocaust case, by Swiss banks.

20 But I've worked also on many damage models, beginning  
21 with the bankruptcy of the Washington Public Power Supply  
22 System, and most recently with the bankruptcy of Enron.

23 MR. GINGOLD: Plaintiffs would like to call up  
24 Plaintiffs' Exhibit 4.

25 BY MR. GINGOLD:

1 Q. Were you in the courtroom yesterday, Professor Cornell?

2 A. Yes.

3 Q. Did you hear Professor Laycock's testimony with respect to  
4 Plaintiffs' Exhibit 4?

5 A. I did.

6 Q. I would like you to focus on the damages and restitution  
7 notes that are identified in that exhibit.

8 Are you familiar with the terms that are used in this  
9 particular exhibit?

10 A. Yes. In my professional consulting experience, I've come  
11 across these terms, restitution and damages, on numerous  
12 occasions.

13 Q. And with respect to a damages model, is it your  
14 understanding that the identified items are typical of what you  
15 would include in a damages model?

16 A. Yes. I think Professor Laycock did a very professional job  
17 yesterday of explaining the difference between damages and  
18 restitution, and what is constituted in each.

19 Q. And what is your understanding of what is constituted in a  
20 damages model?

21 MR. WARSHAWSKY: Objection, Your Honor, to the extent  
22 he's asking for a legal conclusion.

23 THE COURT: Sustained.

24 BY MR. GINGOLD:

25 Q. What is your understanding of what you were asked to develop

1 with respect to the model in this case?

2 A. In this case I was asked to develop a model that assessed  
3 the benefits to the government of having access to Individual  
4 Indian Monies.

5 Q. In your assessment of the benefits to the government, did  
6 you include in the model any assessment of income never  
7 collected?

8 A. Income never collected that should have been collected on  
9 Indian properties?

10 Q. That's correct.

11 A. No, I did not.

12 Q. Did you include in the model assets sold or assets leased  
13 below market value?

14 A. No, I did not attempt to determine whether or not  
15 transactions had been entered into at prices that were not fair  
16 to the individual Indians.

17 Q. Did you include mismanaged assets?

18 A. No.

19 Q. Did you include lost or stolen funds?

20 A. No.

21 Q. Did you include the consequences of failure to enforce lease  
22 terms?

23 A. My effort was not to.

24 Q. Did you include money not paid on direct pay contracts?

25 A. I did not.

1 Q. Now, what did you include, generally?

2 A. What did I do generally?

3 Q. What did you include in the model generally?

4 A. The key items that I included were funds collected on behalf  
5 of the individual Indian accounts, and funds -- an estimate of  
6 funds disbursed on those accounts. Those are the two key inputs  
7 to my model, along with an interest rate to reflect the cost to  
8 the United States government of borrowing funds.

9 Q. Generally how did you make the determination of estimating  
10 or modeling the costs of borrowing?

11 A. I used the 10-year Treasury bond rate. The United States  
12 government borrows at a variety of maturities, ranging from  
13 three-month Treasury bills up to 30-year Treasury bonds. The  
14 average rate at which they borrow is well approximated by the  
15 10-year rate, which is in the middle of that range, and in  
16 addition, data is available on the 10-year bond rate going all  
17 the way back to 1887, where other maturities, such data is not  
18 available.

19 Q. Do you believe that's a reasonable rate to use?

20 A. Yes, I believe the 10-year Treasury bond rate is a  
21 reasonable approximation of the cost of funds, on average, to  
22 the United States government.

23 MR. GINGOLD: Plaintiffs would like to mark for  
24 identification Plaintiffs' Exhibit 40.

25 BY MR. GINGOLD:

1 Q. Professor Cornell, have you reviewed this exhibit before?

2 A. Yes.

3 Q. Can you tell the Court what it is, as you understand it?

4 A. I forgot the exact source. It's a government document. But  
5 it compares rates on an IIM trust fund with 10-year  
6 U.S. Treasury rates.

7 Q. I would like you to pay particular attention to the  
8 highlighted portion of this document. And we're dealing with  
9 specific dates from September 1998 to January 1999. Do you see  
10 that, Professor?

11 A. I do.

12 Q. Do you notice whether or not there's a difference between  
13 the IIM OST rate and the 10-year Treasury rate?

14 A. Yes. The IIM OST rate is significantly higher. And that's  
15 not surprising --

16 MR. WARSHAWSKY: Objection, Your Honor. With all due  
17 respect, Professor Cornell has stated he doesn't know where this  
18 document is from. I don't think a foundation has been laid for  
19 him to testify about it.

20 THE COURT: Overruled.

21 THE WITNESS: I just couldn't -- I think I said I  
22 couldn't remember where it was from. At one time I did know  
23 that, and I think the footnote says.

24 A. But to return to what I was saying, the interest rates are  
25 substantially higher during that period on the IIM OST fund, and

1 that's not surprising. The 10-year government bond rate is one  
2 of the lowest interest rates in the economy. The safety,  
3 liquidity, regulatory benefits and whatnot provided by Treasury  
4 securities make them typically the lowest interest rate  
5 securities of their class in the country.

6 MR. GINGOLD: Your Honor, just a note in response to  
7 Mr. Warshawsky's question --

8 THE COURT: You don't need to. It was an objection, I  
9 overruled it.

10 MR. GINGOLD: But this was filed by the government in  
11 this case.

12 BY MR. GINGOLD:

13 Q. Professor Cornell, if you were creating or developing a  
14 damages model, would you use the 10-year Treasury rate or the  
15 IIM OST factor?

16 A. Well, if I was developing a damages model, what I should use  
17 is the rate that the Indians reasonably could have earned on  
18 their funds. And usually, any well managed fund can earn  
19 something in excess of the Treasury rate without bearing any  
20 meaningful risk, so something like the IIM OST factor would  
21 probably be a better choice in a damages model.

22 Q. And why is that?

23 A. Because it represents what they could have earned and what  
24 they lost if they did not earn that rate.

25 Q. And you developed this model as a restitution model. Is

1 that correct?

2 A. I did.

3 Q. And what did you use? During this period of time, for  
4 example, September 1998 to January 1999, did you use the  
5 identifiable 10-year Treasury rates that are included in this  
6 schedule?

7 A. Yes. What I'm looking for is savings to the government by  
8 avoiding borrowing, and therefore I want to use the rate at  
9 which the government borrows. And as I said earlier, I felt a  
10 fair approximation of that was the 10-year Treasury rate.

11 Q. Is it your view that the difference in rate is significant?

12 A. During those five months that you've highlighted?

13 Q. Correct.

14 A. Well, if I were an investor, yes, I would consider 200 basis  
15 points to be an important difference.

16 Q. Generally over time, the rates do change, though, don't  
17 they, through your review of this particular schedule?

18 A. All interest rates change over time, as do these, and as  
19 does the relationship between them.

20 MR. GINGOLD: Plaintiffs would like to identify  
21 Exhibit 41, Attachment A, analysis of benefit to the government.

22 BY MR. GINGOLD:

23 Q. Did you prepare this attachment, Professor Cornell?

24 A. I did.

25 Q. I would like you to explain it generally and then we'll go

1 into the details.

2 A. Okay. Let me start at the highest level and explain how the  
3 mechanics work, and then we can go back and, like I say, fill in  
4 the details.

5 MR. WARSHAWSKY: Excuse me, Your Honor. May we have a  
6 copy? This is not identical to the one the plaintiffs filed in  
7 their brief.

8 A. Okay. There are three key columns to understanding the  
9 mechanics of this chart, and I want to focus on those, and then  
10 I can explain the details of how you get to those. And those  
11 three are column E, corrected revenues; column F, disbursement;  
12 and column H, the 10-year Treasury bond rate that we've spoken  
13 of. All the other columns are fundamentally computed from those  
14 three.

15 So let me explain how it works, starting right at the  
16 top. If you begin in 1887, there is no accumulated benefit at  
17 that point. The account is just starting. In the first year,  
18 column E shows corrected revenues of .59 million and  
19 disbursements of .41. Assuming that those numbers are correct,  
20 that is a nominal benefit to the government of .18 million.  
21 Those are funds brought in, held in accounts to the benefit of  
22 the U.S. government, and not disbursed to individual Indians,  
23 and therefore, the benefit that year is .18 million to the  
24 U.S. government.

25 Now, there's no interest that year because that's the

1 first year. So to see how the interest enters in, let's go  
2 forward.

3 The following year, the government still has that  
4 benefit of that \$180,000. In addition, the following year there  
5 are corrected revenues of 1.09 million and corrected  
6 disbursements of .76. The difference between those two is .33.

7 So if we want to get the total benefit to the  
8 government through the end of year two, there are three numbers  
9 to add up, the .18 from the previous year, the .33 from this  
10 year, and what is called the accrued benefit annual, which is  
11 just the interest rate applied to the .18.

12 So the government gets three benefits; it gets funds  
13 from last year, funds from this year, and not having to pay  
14 interest on the funds from last year. You add those all  
15 together and you get .52.

16 Now let me do one more year, and I think the rest  
17 follows logically. The next year the government still has the  
18 .52, plus there are corrected revenues of 1.73 million,  
19 disbursements of .96. That's .41. So the three items that go  
20 into the total accumulated benefit are .41, .52, and interest of  
21 .02 on the .52, for a total accumulated benefit of 0.95.

22 And then you can just roll the thing forward year by  
23 year, the calculation just proceeds. And if you get to the  
24 end -- why don't we go to the last page, because there's  
25 something I need to explain. Suppose -- and I think this

1 hypothetical helps you understand how the math works. Suppose  
2 that all those differences between revenues and disbursements  
3 were just dumped into a bank account. None of the money was  
4 taken out of the bank, it was just put in there and allowed to  
5 accumulate interest, like a savings account for a child going to  
6 college, but a very long life child.

7 THE COURT: Or a very dumb child.

8 THE WITNESS: Yeah.

9 A. And if that account was never invaded, and if the interest  
10 rate was about equal to the 10-year bond rate, then by 2007,  
11 that account actually would have accumulated to about  
12 \$58 billion.

13 Now, the reason I point this out, when I roll the  
14 entire thing forward, I get as the accumulated benefit at the  
15 very end \$58,237,000,000, but I have to offset that with  
16 whatever is actually in the reported account, the trust balance,  
17 which is 423 million. Why is it 423 million and not 58 billion  
18 in the trust account?

19 The reason is that funds apparently have flowed out of  
20 that account, but they have not flowed out, as far as plaintiffs  
21 have been able to determine, to the benefit of individual  
22 Indians. Had there been no outflows, that account would be  
23 about 58,237,000,000, there would be a one-for-one offset, there  
24 would be no benefit to the government, and the government could  
25 simply disburse that account now to individual Indians. But the

1 fact that the account is so much smaller means that funds have  
2 flowed out somehow other than the disbursements that are taken  
3 account of in column E.

4 Q. Did you assume a disbursement rate in your model at all?

5 A. Well, the word "assume" is not quite right. I did some  
6 analytical work to attempt to compute a disbursement rate; I  
7 would not, however, call it a detailed final study, but not a  
8 raw assumption, either. It's somehow in the gray area between  
9 those two.

10 Q. Are you familiar with the CP&R data?

11 A. Yes.

12 Q. What is your understanding of the CP&R data?

13 A. Well, one of the things that plaintiffs asked for were  
14 detailed records of checks drawn on account, I think it's 4844,  
15 related to Individual Indian Monies. And by analyzing those  
16 checks, you can get an estimate of the relationship between  
17 disbursements and revenues.

18 Q. In column F, you have a disbursement category. Correct?

19 A. Yes.

20 Q. And what is the source of those disbursements?

21 A. Well, actually, the disbursements are a calculated number.  
22 We probably have to go back and do revenues first. Because the  
23 disbursements are computed as 69.82 percent of revenues, based  
24 on the CP&R data that you spoke of, and the revenues in turn are  
25 calculated from other sources.

1 Q. Do you know whether or not the revenues in the CP&R data  
2 have been -- is there evidence of the actual revenues -- or  
3 sorry, disbursements from the trust in the CP&R data?

4 A. The CP&R data does not show revenues; actually, it shows  
5 disbursements. And it's actual checks written, and some checks  
6 not cashed, but the majority then cashed and the funds  
7 disbursed.

8 Q. Do you know what period of time that includes?

9 A. Yes. I have an exhibit that shows the CP&R data that I  
10 analyzed, and it's, I believe, 1988 through 2002.

11 Q. We'll get to that in a moment.

12 With regard to the Attachment A, however, did you use  
13 data to support your calculations in this model?

14 A. Yes. I used various data sources to estimate both column E,  
15 what I've called corrective revenues, and column F, which I've  
16 referred to as disbursements.

17 Q. Did you have complete data for each year?

18 A. No.

19 Q. Do you recall for what particular years you had data?

20 A. Well, if we go back to the first page of Attachment A, what  
21 I've tried to do here to make it easier to read Attachment A is  
22 highlight in yellow a number where it came from underlying  
23 documents or data sources, and leave in white a number where  
24 there was at least a partial calculation on my part.

25 So if we look at the revenue numbers in column B, you

1 can see that I have some data in the early years, and then if we  
2 page forward, then you can continue to just look at column B and  
3 see what's in yellow. There's not much data in the middle  
4 years.

5 Can we go one more page? And then as we get into the  
6 later years, you'll start to see a lot more data. If you page  
7 one more forward, you see a lot of yellows in the later years  
8 under revenues, and that comes from what's been referred to as  
9 AR-171. But I think I need to be clear. Apparently there's  
10 been a proliferation of AR-171s. This is from the original  
11 October 2007 AR-171 that I was given when I began work on this  
12 assignment.

13 Q. Let's call up the original AR-171. Is this the AR-171 that  
14 you're referring to and that you used in the model?

15 A. Yes, it is. And if you want to foot the revenues that I  
16 have on my chart to this, they should be the revenues earned on  
17 Indian properties, not any interest paid on account balances.  
18 Because I'm taking account of the interest in my restitution  
19 model as a benefit to the government. I can't double count it.

20 So, for example, if you go to year 2000 and you want to  
21 foot what's on my chart, you would take the Osage QTR annuity,  
22 the judgment per capita, the Tribal IIM, and the other receipts,  
23 you add those up, and now if you go back to Attachment A and  
24 scroll forward to year 2000, the number under column B, 215.3,  
25 would be the sum of those three items that I spoke of.

1                   And all the yellow numbers in column B are from  
2                   schedule AR-171, October 2007 version, computed in that fashion.

3                   Q.   With regard to --

4                   MR. GINGOLD:   I would like to go back to the first page  
5                   on Attachment A.

6                   BY MR. GINGOLD:

7                   Q.   On page one of Attachment A, highlighted in yellow in  
8                   column B for revenues is a 1909 number.   Correct?

9                   A.   Yes.

10                  MR. GINGOLD:   Plaintiffs would like to identify (sic)  
11                  for purposes of identification Plaintiffs' Exhibit 42.

12                  BY MR. GINGOLD:

13                  Q.   Professor Cornell, this is a report of the Commissioner of  
14                  Indian Affairs to the Secretary of Interior for the fiscal year  
15                  ended June 30, 1909.   Is this the report that you used for the  
16                  number or figure in 1909 for revenues in Attachment A?

17                  A.   Yes.   One of the things that I had asked my staff at the  
18                  beginning of this assignment was that we do all we can to find  
19                  and use actual historical data.   And this is one of the  
20                  documents that we were able to find showing revenue data prior  
21                  to the inception of AR-171.

22                  Q.   I would like to turn your attention to a page of this  
23                  document, and it's page 104, as identified in the document  
24                  itself.   Do you see the highlighted figures on this page?

25                  A.   Yes.

1 Q. What do they mean to you?

2 A. What these highlighted documents --

3 MR. WARSHAWSKY: Pardon me, Your Honor. The copy you  
4 gave us didn't have all the pages.

5 THE COURT: It's on your screen.

6 MR. WARSHAWSKY: Is it just the fifth page?

7 MR. GINGOLD: It's just the fifth page.

8 BY MR. GINGOLD:

9 Q. Go ahead, Professor.

10 A. What these highlighted documents show are sources of funds,  
11 IIM funds, in the year 1909. And again, I don't want to double  
12 count interest, so I excluded. But there were three  
13 non-interest sources of funds all shown in yellow; add those  
14 together and you get \$8.9 million, or thereabouts. And if you  
15 go back real quickly to Attachment A --

16 MR. GINGOLD: Page one of Attachment A.

17 A. You can see that 1909, the first yellow one, that foots to  
18 the 8.9.

19 MR. GINGOLD: Plaintiffs would like to mark for  
20 identification Exhibit 43.

21 THE COURT: Would you go back to the page that you were  
22 just showing us?

23 MR. GINGOLD: That's Attachment A?

24 THE COURT: Yeah, with the highlighted numbers that  
25 footed to -- no, the page from the 1909 report from the

1 Commissioner to the Secretary that you just showed to  
2 Professor Cornell.

3 MR. GINGOLD: It's Plaintiffs' Exhibit 42, page five.

4 THE COURT: There you go. \$12,983,000 on hand and  
5 received. This 3,992,000 that is part of that total is money  
6 that was in the hands of disbursing officers and in bonded banks  
7 to the credit of individual Indians.

8 How, if at all, does that amount of money fit into your  
9 calculation? Is that part of the accumulated sum of money on  
10 which interest has been calculated for years previous to 1909 in  
11 your model?

12 THE WITNESS: Yes, that would represent, if you like,  
13 the equivalent to the balance in your checking account at the  
14 beginning of the year, and that would reflect income from  
15 previous years and disbursements from previous years, and any  
16 interest earned. And then the 8.9 million reflects the receipts  
17 during that year. So before any disbursements, the balance  
18 would be 12.98.

19 But the only number I actually used from this data set  
20 was the receipts.

21 THE COURT: No, I understand that. The only number you  
22 used was the receipts, but this 3.9 million also works its way  
23 into your calculation because it's accumulated from previous  
24 years.

25 THE WITNESS: It would have been accumulated from

1 previous years, yes.

2 THE COURT: And if it's in bonded banks to the credit  
3 of individual Indians, presumably it's earning interest in those  
4 banks.

5 THE WITNESS: I would presume so, though any data on  
6 what rate and so forth is unavailable.

7 THE COURT: Okay. Go on.

8 BY MR. GINGOLD:

9 Q. But Professor, to the extent you're aware of any interest,  
10 you backed the interest out of your calculations. Correct?

11 A. Correct. To the extent that there is any interest earned on  
12 the Indian funds held in the accounts, that will lead those  
13 accounts to be bigger, and ultimately lead the 423 million that  
14 I net out to be larger. So I can't double count that interest  
15 as a receipt.

16 Q. And to the extent that evidence is presented that interest  
17 was earned and that it is included in these totals, you would be  
18 able to back that interest out and revise the calculation. Is  
19 that correct?

20 A. Yes.

21 MR. GINGOLD: Plaintiffs would like to turn to  
22 Exhibit 43.

23 BY MR. GINGOLD:

24 Q. This is a report of the Commissioner of Indian Affairs to  
25 the Secretary of the Interior for the fiscal year ended June 30,

1 1910. Have you reviewed this document, Professor?

2 A. Yes.

3 Q. Is this a document that you used for your revenue  
4 information in Attachment A for 1910?

5 A. Yes. My staff located references to Indian revenues in this  
6 document.

7 Q. I would like to turn to the fourth page of this document.  
8 Do you see the identified or the highlighted figures on this  
9 page?

10 A. Yes.

11 Q. Could you explain your understanding of what they are?

12 A. I interpreted all of those to be sources of receipts to  
13 Indian accounts. So I summed them, but netted out the interest.

14 Q. And the interest category is approximately \$176,000. Is  
15 that correct?

16 A. Yes. So the net looks like it's going to be net of the 176,  
17 about \$10.4 million. So if you go back to Attachment A, and if  
18 I'm remembering everything right, that will foot. Yes, there it  
19 is, 1910, \$10.4 million.

20 Q. I would like to go back to Plaintiffs' Exhibit 43, the  
21 fourth page. If you go look immediately above the highlighted  
22 figures and you see other figures which are identified as on  
23 hand July 1, 1909, do you see that?

24 A. Yes.

25 Q. With respect to what Judge Robertson asked you as to the

1 previous exhibit, what is your understanding of these numbers  
2 and how are they used in your model, if they're used at all?

3 A. Well, that's the building up of the bank accounts in Indian  
4 names, or for the benefit of Indians. And it's not explicitly  
5 used, but it would be part of what eventually ends up to be the  
6 current balance of 423.

7 Q. I would like to turn back to Attachment A, please. Now, the  
8 next revenue number that you've identified as a source,  
9 specifically sourced data point, is for 1911. Correct?

10 A. Correct.

11 MR. GINGOLD: Plaintiffs would like to mark for  
12 identification Exhibit 44, which is identified as reports of the  
13 Department of Interior for the fiscal year ended June 30, 1912.

14 Your Honor, it's identified as 1912, but it covers  
15 inside of this document the fiscal year 1911.

16 BY MR. GINGOLD:

17 Q. I would like you to turn your attention to the third page of  
18 this document, or page number seven of the report itself. And  
19 there are highlighted portions of this document. Do you see  
20 that, Professor?

21 A. Yes. It's another thing my staff located. There was 7.88  
22 million received, and 272,000 of interest earned, so I netted  
23 the interest out against the receipts to get a total revenue  
24 from the Indian properties during that year.

25 Q. For purposes of clarification, Professor Cornell, with

1 regard to the \$272,948 in interest, do you see that?

2 A. Yes.

3 Q. Do you see the year that this refers to in that sentence?

4 A. 1911.

5 Q. And at the bottom of the page, I would like to note, do you  
6 see the year that the 7,881,800 was considered to have been  
7 received?

8 A. Yes.

9 Q. And there's a balance stated. Is that correct?

10 A. Yes.

11 Q. What year is that balance stated for?

12 A. Well, that was the beginning of the fiscal year 1911.

13 Q. Now I would like to turn back to Attachment A, please. So  
14 does the revenue number identified in B track the plaintiffs'  
15 exhibit that we just -- Plaintiffs' Exhibit 44?

16 A. I believe it does, but we're on the wrong page. You have to  
17 go back a page.

18 Q. Page one?

19 A. Well, it shows 1916 to '44. There's 1911, 7.61. That's  
20 7.88 minus .27.

21 Q. Now, the next few years in Attachment A, you do not have the  
22 revenue figures highlighted, do you?

23 A. No.

24 Q. And what is the reason for that?

25 A. Couldn't find any data.

1 Q. You did put a data or revenue number in, though, didn't you?

2 A. Yes.

3 Q. How did you make that determination?

4 A. Well, all the white numbers I needed to, quote, fill in the  
5 blanks, and I worked with some statisticians at CRA to examine  
6 various methods for filling in the blanks, linear regression,  
7 nonlinear regression, logarithmic models. And I found that  
8 simple linear interpolation between the missing points seemed to  
9 work as well as any of the more sophisticated methods, and it  
10 actually led to a smaller final number, and in that sense, I  
11 felt was conservative.

12 So for the results that I've reported here, I've used  
13 simple linear interpolation between the missing end points.

14 Q. Is that a reasonable approach, under these circumstances, in  
15 your opinion?

16 A. I think that you have to use some meaningful statistical  
17 method for filling in the blanks, and, like I say, I looked at a  
18 large variety, and I think the simple, direct one is reasonable  
19 in light of the work that I've done.

20 Q. With respect to fiscal year 1915, again you have a  
21 highlighted yellow number. Correct?

22 A. Yes.

23 MR. GINGOLD: Plaintiffs would like to mark for  
24 identification Exhibit 45.

25 BY MR. GINGOLD:

1 Q. This is identified as a report from the Commissioner of  
2 Indian Affairs in 1915, as of June 30th, 1915. Have you  
3 reviewed this document before, Professor?

4 A. Yes.

5 Q. I would like you to take note of the highlighted portions of  
6 this report.

7 A. They're on a number of pages.

8 Q. Let's start with page one. With regard to page one, do you  
9 see the highlighted numbers?

10 A. Yes.

11 Q. Okay. What do they mean to you?

12 A. They're proceeds from land sales during that period, is the  
13 way I interpret it.

14 Q. Are there two different categories of land sales here?

15 A. Yes.

16 Q. What are they?

17 A. There are so-called non-competent sales and inherited land  
18 sales.

19 Q. Did you use these proceeds numbers in your model?

20 A. Yes. They're two of the elements that I summed to get my  
21 final 1915 number.

22 Q. I would like to turn to the next page, please. Do you see  
23 the highlighted number on this page?

24 A. Yes.

25 Q. What does this refer to?

1 A. Income from leased land.

2 Q. And did you use this number in your calculation in your  
3 model?

4 A. I did.

5 Q. I would like to turn to the next page, please. And again,  
6 there's a highlighted number on this page as well, and what is  
7 your understanding of that number?

8 A. Again, income from leases. This may be, I don't recall  
9 specifically, mineral leases, but it's further lease income.

10 Q. I would like you to note at the top of the page, the table  
11 identifies this is grazing lands.

12 A. Oh, yes, okay.

13 Q. And did you use this income total in your calculation for  
14 fiscal year 1915?

15 A. I did. I added that in.

16 Q. I would like to turn to the next page, please. There are  
17 three items highlighted here, aren't there?

18 A. Yes. These are royalty payments, and I think this one is  
19 related to minerals, oil and gas.

20 Q. Yes, that is referred to in the description at the top of  
21 the table. Is that correct?

22 A. Yes.

23 Q. And did you use this revenue information in your calculation  
24 for 1915 in your model?

25 A. Yes, I summed the three yellow items.

1 Q. I would like to turn to page two of Attachment A. You have  
2 additional highlighted revenue numbers, don't you, Professor?

3 A. Yes.

4 Q. And the next one we have is 1916. Is that correct?

5 A. Yes.

6 MR. GINGOLD: Plaintiffs would like to mark for  
7 identification Exhibit 46, which is a report from the  
8 Commissioner of Indian Affairs for fiscal year ended June 30,  
9 1916.

10 BY MR. GINGOLD:

11 Q. Professor, on page one of Plaintiffs' Exhibit 46, do you  
12 notice specific proceeds or revenue numbers in this report?

13 A. Yes. In fact, just to make following this simpler, there's  
14 five years, I believe, where we have reports, and they're all  
15 the same. So for those five years, I think it's -- or six  
16 years, 1915 through 1920, I went through and picked out exactly  
17 the same lines.

18 So as we walk through this, it will be similar to the  
19 one we just did. You'll have first the land sales , then you'll  
20 have the two leases --

21 Q. This is on page two of Plaintiffs' Exhibit 46. Correct?

22 A. Yes. You'll have a lease income number there.

23 Q. And then page three of Exhibit 46?

24 A. You'll have another lease income.

25 Q. And then the last page of the exhibit?

1 A. Is the minerals, oil and gas, with the three numbers that I  
2 summed.

3 Q. And then you employed all of these revenue numbers in your  
4 model for 1916. Correct?

5 A. I add them up, and that's the number that will foot to  
6 revenue for 1916.

7 Q. So if you calculated those numbers, they would be equal to  
8 \$13.61 million. Correct?

9 A. Yes.

10 Q. With respect to 1917, did you do the same thing?

11 A. Exactly the same thing.

12 MR. GINGOLD: Your Honor, we have -- I can go through  
13 these if you like. Let's go to Plaintiffs' 47.

14 THE COURT: It's your nickel, Mr. Gingold.

15 BY MR. GINGOLD:

16 Q. Let's go to Plaintiffs' 47. You see the highlighted revenue  
17 or proceeds numbers in this document, which is fiscal year  
18 January 30, 2017 (sic) document from the Commissioner of Indian  
19 Affairs?

20 A. I do.

21 Q. What do they mean to you?

22 A. As I just stated, we can march through this, we'll have the  
23 land sales, two leases, and then the minerals, oil and gas. And  
24 if you sum all those highlighted numbers, you'll get the number  
25 on Attachment A.

1 Q. And they're exactly what you've described, but they're  
2 different numbers, correct, for this fiscal year?

3 A. Yes. Exactly the same schedule, just different numbers for  
4 the more recent years.

5 MR. GINGOLD: Plaintiffs would like to mark for  
6 identification --

7 BY MR. GINGOLD:

8 Q. And that, Professor, is with respect to 1917, correct, in  
9 your Attachment A?

10 A. Excuse me?

11 Q. These numbers are the numbers you used --

12 A. Yes.

13 Q. -- to calculate the revenue number in Attachment A for 1917.  
14 Correct?

15 A. That's correct. The sum foots to the revenue for 1917.

16 MR. GINGOLD: Plaintiffs would like to mark for  
17 identification Exhibit 48.

18 BY MR. GINGOLD:

19 Q. This is a fiscal year ending June 30, 1918 document, a  
20 Commissioner of Indian Affairs report. Professor, are these the  
21 same proceeds and revenue numbers for 1918, same categories that  
22 you used in your previous calculations --

23 A. Yes.

24 Q. -- for each fiscal year?

25 A. Exact same categories, same relation on the pages. Add them

1 all up, you'll get the 1918 number.

2 Q. And that's on page one, page two, page three, and page four  
3 of this report. Correct?

4 A. That is correct.

5 Q. And that number should track the number in 1918. Correct?

6 A. It does.

7 Q. Which is \$21.02 million?

8 A. Yes. I checked all these last night to be sure that they  
9 did indeed foot.

10 MR. GINGOLD: Plaintiffs would like to mark for  
11 identification Exhibit 49.

12 BY MR. GINGOLD:

13 Q. This is a Commissioner of Indian Affairs report for fiscal  
14 year ended June 30, 1949. Professor, once again, did you use  
15 the proceeds or revenue numbers --

16 A. I think you said 1949.

17 Q. Sorry, 1919. I'm sorry. It's at Plaintiffs' Exhibit 49.

18 A. Yes.

19 Q. So you used these, the highlighted numbers, starting page  
20 one?

21 A. You know, I think that there was a number that should have  
22 been highlighted that was not, if we go back and make it a  
23 little bigger, like you did.

24 MR. GINGOLD: Page one, please highlight.

25 A. Yes. I think the 1,224,000 under proceeds, non-competent

1 sales, should be highlighted.

2 BY MR. GINGOLD:

3 Q. And what number is that, Professor?

4 A. The one they are now highlighting, that one.

5 Q. Okay. And that number was included in your calculation for  
6 1919, was it not?

7 A. That's my recollection, yes.

8 Q. Let's go to the next page. There's a highlighted number on  
9 this page under "total income." Did you include that number --

10 A. Yes.

11 Q. -- in your calculation?

12 I would like to go to the next page. Once again, we  
13 have a total income category. Do you see that?

14 A. I do.

15 Q. And once again, you included that in your calculation for  
16 1919, didn't you?

17 A. Yes.

18 Q. And finally, the next page has revenue numbers for three  
19 different categories. Correct?

20 A. Yes.

21 Q. And did you include those numbers in your calculation for  
22 the revenue figures for 1919?

23 A. I did.

24 MR. GINGOLD: Plaintiffs would like to mark for  
25 identification Exhibit 50. This is again a Commissioner of

1 Indian Affairs report for fiscal year ended June 30, 1920.

2 A. Yes.

3 BY MR. GINGOLD:

4 Q. On page one, we have a highlighted number in total income.

5 Do you see that?

6 A. Yes.

7 Q. Did you include that number in your calculation for the  
8 revenues for 1920?

9 A. Yes.

10 Q. The next page, total income, this is with respect to leased  
11 grazing lands. Did you include that number in your total for  
12 your calculation of your 1920 revenues?

13 A. I did, yes.

14 Q. I would like to go to the next page. With respect to sales  
15 of allotted lands, did you include the number under proceeds in  
16 your calculation for 1920?

17 A. Yeah, I believe both numbers under proceeds should be  
18 highlighted once again, so we would include the non-competent  
19 sales and the inherited land sales.

20 Q. And finally on this document I would like to go to the next  
21 page. You again have three items or three proceeds identified  
22 under revenue. Did you include those numbers in your  
23 calculation?

24 A. I did, yes.

25 Q. And once again, using these numbers should allow you to come

1 to the conclusion that your revenue for 1920 is \$38.64 million.

2 Is that correct?

3 A. Correct.

4 MR. GINGOLD: Plaintiffs would like to mark for  
5 identification Exhibit 51. This is a report of the Commissioner  
6 of Indian Affairs, fiscal year ended June 30, 1923.

7 BY MR. GINGOLD:

8 Q. I would like to point your attention to the next page of  
9 this document. Do you see the highlighted numbers on this page?

10 A. I do.

11 Q. What do they mean to you?

12 A. Rather than the breakout, we only had the descriptive text  
13 in this year, and it shows the amount deposited in the banks,  
14 35 million, which I interpreted to be the receipts, and then it  
15 mentions interest of 1.425 million, which I took to be interest  
16 in addition. So I did not add that in, I just used the amount  
17 deposited.

18 Q. And did you use the \$35 million figure as the revenue figure  
19 for --

20 A. Let's go back. I want to be sure.

21 Q. Go back to the Attachment A?

22 A. Yes, please.

23 Q. First page -- or second page?

24 A. Yes. You'll see in 1923 the \$35 million.

25 Q. And if the government presented evidence that the

1 \$35 million included \$1,425,000 dollars in interest, you would  
2 be able to back that out of your model, wouldn't you?

3 A. Yes. In fact, if the government presented any detailed  
4 information on any of these numbers of revenues and  
5 disbursements, this schedule could be adjusted.

6 MR. GINGOLD: Plaintiffs would like to mark for  
7 identification Exhibit 52.

8 BY MR. GINGOLD:

9 Q. This is a document that is identified as Institute For  
10 Government Research, the Office of Indian Affairs, and it's  
11 dated 1927. Do you see that on the cover?

12 A. Yes.

13 Q. I would like you to go to the second page. Do you see the  
14 highlighted portion of the sentence on the second page?

15 A. Yes.

16 Q. Do you see this is identified as fiscal year 1926?

17 A. I do.

18 Q. Now, there are receipts identified for fiscal year 1926 with  
19 regard to Individual Indian Money. Do you see that?

20 A. Yes.

21 Q. What is that number?

22 A. \$22.75 million.

23 Q. Let's go back to Attachment A, page two. Did you use the  
24 number from Plaintiffs' Exhibit 52 to identify the number in  
25 fiscal year 1926 under revenues?

1 A. Yes. There it is, actually rounded up to 22.76.

2 THE COURT: And what does the disbursement column show  
3 over there? Because what you just showed us has a --

4 THE WITNESS: Well, the disbursement column is actually  
5 going to be 70 percent of what I call the corrected revenues.

6 THE COURT: Yeah, but go back to what you just showed  
7 us.

8 MR. GINGOLD: Let's go back to Plaintiffs' Exhibit 52.

9 THE COURT: Yeah.

10 MR. GINGOLD: The second page. I think the middle of  
11 the paragraph --

12 THE COURT: It says the disbursements totaled  
13 35 million, and you've got a number of 20 something million,  
14 which is a calculated number.

15 THE WITNESS: Correct.

16 THE COURT: So you're buying one half of this equation  
17 but not the other half. Why?

18 THE WITNESS: There is very sparse and incomplete  
19 data -- are you asking him or me, Your Honor?

20 THE COURT: You. You.

21 THE WITNESS: Very sparse and incomplete data on  
22 disbursements. I felt that the best data I had on disbursements  
23 was the CP&R data, and I applied that throughout.

24 But I'm sensitive to the fact that there may be a  
25 better way to do disbursements, and if there is, I'm more than

1 willing to go back and change my disbursement numbers to  
2 whatever is most appropriate.

3 THE COURT: Well, in this particular case the  
4 disbursement number is 35.4 million, and what does it show on  
5 your table?

6 MR. GINGOLD: Let's go back to Attachment A, page two.

7 THE COURT: 23 million.

8 THE WITNESS: Correct.

9 THE COURT: So there's a \$12 million difference there.  
10 That's pretty stark.

11 THE WITNESS: Well, there are other years, too, where  
12 you will see the same thing, and some years where you have this  
13 patchwork data going the other way.

14 THE COURT: But this disbursement column is a  
15 calculated column --

16 THE WITNESS: It is a calculated --

17 THE COURT: -- 69.8 percent?

18 THE WITNESS: Yes.

19 BY MR. GINGOLD:

20 Q. Indeed, Professor, with regard to the other fiscal years  
21 that we've been talking about through the exhibits that you have  
22 been testifying to, and that's 1909, 1910, 1911, 1915, 1916,  
23 1917, 1918, 1919, 1920, and 1923, did you observe in those  
24 particular reports reports of disbursements?

25 A. Occasionally. I can't say that there was one every year.

1 Q. So is there a reason you did not use the actual reported  
2 disbursements instead of the calculated disbursements for those  
3 years?

4 A. Well, like I say, the disbursement data was particularly  
5 patchwork and not very clearly described, so I felt between two  
6 tough choices, I would project the CP&R data backward in time.  
7 I felt that was more reasonable, but I recognize that there  
8 could be further refinement that might be better than either  
9 simple approach.

10 Q. And depending on what the government presents as evidence,  
11 you can adjust your disbursement numbers up or down. Correct?

12 A. Yes. Ultimately it was explained to me that the proving up  
13 of the disbursements would be the job of the government, and the  
14 government was going to present evidence. And when I've had a  
15 chance to see that evidence, I can respond accordingly.

16 Q. Let's talk about the other categories we have on  
17 Attachment A.

18 THE COURT: Just for interest, and as a way of trying  
19 to figure out what is the sensitivity of this model, is there  
20 any quick or easy -- is this spreadsheet loaded on anybody's  
21 computer here? I mean, an active --

22 THE WITNESS: You mean like an Excel, so you can change  
23 numbers?

24 THE COURT: Yeah, yeah.

25 THE WITNESS: We can make sure that it is after lunch.

1 THE COURT: I'm considering what would happen, just for  
2 the sake of interest, if you adjusted that single year  
3 disbursement number from 23 to 35 million, what would be the  
4 bottom line after 70 or 80 years?

5 MR. GINGOLD: Your Honor, we could do this over lunch  
6 for you and can give you a precise explanation for it.

7 THE COURT: I'm just interested in the sensitivity of  
8 this model, that's all.

9 MR. GINGOLD: My understanding, Your Honor, is that any  
10 particular year will not have a material effect on a conclusion,  
11 it's a buildup, and adjustments over a series of years could  
12 have a material effect downwards or upwards, Your Honor.

13 THE COURT: Okay. Let's test that proposition over  
14 lunch.

15 MR. GINGOLD: We shall do that, Your Honor.

16 THE COURT: All right.

17 THE WITNESS: I can do the back of the envelope in my  
18 head, too.

19 THE COURT: You've got a pretty good head if you can  
20 figure that one out.

21 MR. GINGOLD: Your Honor, he has a very good head.

22 BY MR. GINGOLD:

23 Q. Let's do that, Professor.

24 A. The way you would do that is it's a \$12 million difference,  
25 and then you just run it forward at the compounded interest

1 rate. What year is that \$12 million difference?

2 THE COURT: 1926, I think, something like that.

3 MR. GINGOLD: 1926.

4 A. So you're looking at 80 years of interest at an average of  
5 about five percent. That's going to be a 10 to 20 times factor.  
6 Let's take the upper bound and say 20 times, so 12 times 20  
7 would be 240 million. It would reduce the final number I think  
8 by about 240 million.

9 (Speaking from audience.)

10 MR. WARSHAWSKY: I don't think that person is sworn in,  
11 Your Honor.

12 THE COURT: He's got a different envelope he's done it  
13 on.

14 MR. GINGOLD: I think there's cash in that envelope,  
15 Your Honor.

16 THE WITNESS: We'll get the exact number after lunch.

17 MR. GINGOLD: Your Honor, we'll get the exact number  
18 and explain the effects that it has.

19 BY MR. GINGOLD:

20 Q. I would like to turn your attention to Plaintiffs'  
21 Exhibit 53, and I would like to go to page three of  
22 Attachment A, please.

23 A. Okay, I'm there.

24 Q. You're there, we're not.

25 A. I'm on the cover page, I guess.

1 Q. No, we're going to Attachment A again.

2 A. Oh, excuse me. Okay.

3 Q. Page three of Attachment A. In 1955 you've identified what  
4 number as revenues, Professor?

5 A. 66.81 million.

6 Q. Let's go back to Plaintiffs' Exhibit 53. I would like to  
7 turn to the fourth page of this exhibit. If we can focus on the  
8 left-hand side of the page, do you see an item that's underlined  
9 on the page, Professor?

10 A. Yes.

11 Q. Do you know what that is?

12 A. 66.81 million. That's the total collections.

13 Q. And that's a total collection for fiscal year 1955.

14 Correct?

15 A. Yes.

16 Q. Let's go back to Attachment A once more, please, and it's  
17 the third page of Attachment A. And that number is the number  
18 you used, correct, in your revenue calculation?

19 A. Correct.

20 THE COURT: Hold it.

21 MR. GINGOLD: 1955, Your Honor, 66.81.

22 THE COURT: Yeah. And again, disbursements in that  
23 same document say something like 66 million, and here it says  
24 52 million.

25 THE WITNESS: Correct. Disbursements mentioned in that

1 document are larger.

2 MR. GINGOLD: So Your Honor, we will factor that in  
3 during lunch as well.

4 Plaintiffs would like to mark for identification  
5 Exhibit 54. Exhibit 54 is the United States Department of  
6 Interior Official Office of Survey and Review Audit Operations.  
7 It's dated March 1969.

8 BY MR. GINGOLD:

9 Q. I would like to turn your attention to the fourth page of  
10 this report. Excuse me, before we go to the fourth page, let's  
11 go to the third page. I would like to focus in on the middle of  
12 the third page.

13 This confirms that this review was performed during the  
14 period June through November 1968?

15 A. Yes.

16 Q. I would like to now turn to the fourth page. The fourth  
17 page, there's a paragraph with the number one. Do you see that?

18 A. Yes.

19 Q. What is that?

20 A. \$121 million.

21 Q. \$121 million in what? What does it represent?

22 A. It represents the total receipts.

23 Q. Let's go back to Attachment A, the third page in  
24 Attachment A. Do you see 1968 and the revenues there,  
25 Professor?

1 A. I do.

2 Q. And what number is that?

3 A. \$121 million.

4 Q. Now, Professor, we now have over the next two pages or three  
5 pages of the attachment all highlighted revenue numbers. Do you  
6 see that?

7 A. Those are AR-171, as I described earlier in my testimony.

8 Q. Let's bring back AR-171. Could you explain, Professor, once  
9 again, how you used the information in AR-171 to calculate --

10 A. I summed column C, D, E, and F, which I interpreted to be  
11 revenues related to Indian lands, but excluding interest on  
12 deposits.

13 Q. And what is column C?

14 A. Column C is something called the Osage Quarterly Annuity.

15 Q. And what is --

16 A. In my Attachment A I called it Osage Government Calculated.

17 Q. And column D in A-171?

18 A. Judgment Per Capita.

19 Q. And column E?

20 A. Tribal IIM.

21 Q. And then F, you have Other Receipts. Correct?

22 A. Correct.

23 Q. What does that mean?

24 A. Everything else I interpreted that to be, everything else  
25 the government accounted for.

1 Q. And do you have any understanding of where AR-171 is  
2 sourced?

3 A. I knew it. I don't remember off the top of my head. I  
4 believe -- I can't remember if there's a footnote on this one or  
5 not. But it came from the government. I don't recall the  
6 precise source from which they got it.

7 Q. So none of the revenue numbers or disbursement numbers are  
8 numbers that are your numbers. Correct?

9 A. Correct. This is a government document.

10 Q. Plaintiffs would like to mark for identification Exhibit 55.  
11 Professor Cornell, what is Exhibit 55?

12 A. This is simply a graphical representation of the revenue  
13 data points that we've been through, the individual years that  
14 we've gone through up through 1968, I think it is, and then the  
15 AR-171 data after that.

16 Q. So is this actual data that you --

17 A. This is all the actual data.

18 Q. I would like to turn to the second page of this exhibit,  
19 which is identified as part of Plaintiffs' Exhibit 55,  
20 Attachment B.2. Now, what does this reflect? This is  
21 identified as "Annual IIM Trust Revenue, 1887 to 2007, Derived  
22 From Government Data, Missing Data Estimated Using Linear  
23 Interpolation."

24 A. This is a plot of the data with the blanks filled in by  
25 linear interpolation. So to get a missing observation, it would

1 be the point on the blue line for any particular year.

2 And in Attachment A, those numbers are shown without  
3 the yellow highlighting.

4 Q. The numbers reflected in the blue line as opposed to the red  
5 dots are reflected without the yellow highlighting. Correct?

6 A. Yes.

7 Q. Is this a reasonable approach to estimate missing data, in  
8 your view?

9 A. I think it is. Like I said before, it's consistent with  
10 more sophisticated approaches, and when you look at the plot, it  
11 seems to be largely consistent with what you would expect, given  
12 the observations that we do have.

13 THE COURT: Except for that big spike in the late '70s  
14 and early '80s. Where does that come from?

15 THE WITNESS: You know, my guess, and it's only an  
16 educated guess, is that's the first oil boom, and you get a lot  
17 of oil revenues when the oil prices spike. But I can't say that  
18 for sure.

19 The linear interpolation ends where the blue line ends,  
20 and it's all government data after that.

21 THE COURT: After that it's all --

22 THE WITNESS: All actuals.

23 BY MR. GINGOLD:

24 Q. So whether it's right or wrong, you took that from actual  
25 government data. Correct?

1 A. Yes.

2 Q. And to the extent there is better data proved up in this  
3 case, you can adjust it appropriately. Is that correct?

4 A. Yes.

5 MR. GINGOLD: Plaintiffs would like to mark for  
6 identification Exhibit 56, which is identified as Attachment C,  
7 Individual Indian Trust Disbursement Calculation.

8 THE COURT: Can we get into that after lunch?

9 MR. GINGOLD: Yes, Your Honor.

10 THE COURT: We'll be in recess for an hour for lunch.  
11 Thank you.

12 (Recess taken at 12:28 p.m.)  
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**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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**SIGNATURE OF COURT REPORTER**

**DATE**

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